1407

SUPREME COURT OF THE UNITED STATES.

No. ~~158.~~ 80.

JOHN O. WOODRUFF AND ROBERT M. HENNING, SURVIVORS OF JAMES E. WOODRUFF, DECEASED, APPELLANTS,

vs.

WILLIAM NELSON, EDWARD S. DENNIS, FRANCIS BURRITT, SHERBOURNE SEARS AND AARON COHEN.

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1409

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vs.

WILLIAM NELSON, EDWARD S. DENNIS, FRANCIS BURRITT, SHERBOURNE SEARS AND AARON COHEN.

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Certificate of Clerk of Circuit Court.

UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF NEW YORK. } ss.

I, Kenneth G. White, Clerk of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, do hereby Certify that the Writings annexed to this Certificate are true copies of their respective Originals, on file, and remaining of record in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this twenty-seventh day of November, in the year of our Lord one thousand eight hundred and fifty-nine, and of the Independence of the said United States the eighty-fourth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

At a Stated Term of the District Court of the United States of America, for the Southern District of New York, held at the City Hall, in the City of New York, on Thursday, the thirteenth day of May, in the year of our Lord one thousand eight hundred and fifty-eight

Present: The Honorable Samuel R. Betts, District Judge.

WILLIAM NELSON, and others,
vs.
JOHN O. WOODRUFF, and another. } Dec. 8th, 1856.

Libel.

The Libellants file their Libel, in the words and figures following, to wit:

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern District of New York.

The Libel of William Nelson, Edward S. Dennis, Francis Bartlett, Sherburne Sears, and Aaron Cohen, owners of the ship Maid of Orleans, her tackel, apparel and furniture, against John O. Woodruff and Robert M. Henning, surviving co-partners of James E. Woodruff, deceased, late composing the firm of James E. Woodruff & Co., of the City of New York, merchants, in a cause of contract, civil and maritime, alleges as follows:

First. That they were, at the times hereinafter mentioned, and still are, the owners of the ship Maid of Orleans, and that E. P. Dennis was then the master thereof.

Second. That in the month of July, 1854, the said ship, then lying at the port of New Orleans, and destined on a voyage thence

to the port of New York, Kennett, Dix & Co., shipped on board the said vessel, one thousand and ninety-nine barrels of lard and sixty-one tierces of lard, weight and contents unknown, to be therein carried from the said port of New Orleans to the said port of New York, and there to be delivered, the dangers of the sea and fire only excepted, in like good order as they were received to the said J. E. Woodruff & Co., or to their assigns, he or they paying freight for the same at the rate of one dollar and fifteen cents per barrel, and one dollar and fifty cents per tierce, with five per cent. primage and average accustomed. And at the same time, John O. Woodruff & Co. shipped on board the said vessel, at the said port of New Orleans, one hundred and eleven tierces of lard, and one hundred and ninety-six barrels of lard, weight and contents unknown, to be therein carried from the said port of New Orleans to the said port of New York, and there to be delivered, the dangers of the sea and fire only excepted, in like good order as they were received, to the said James E. Woodruff & Co.; or to their assigns, he or they paying freight for the same at the rate of one dollar and fifteen cents per barrel, and one dollar and fifty-three cents per tierce, with five per cent. primage and average accustomed. And accordingly the said master, at the port of New Orleans, on the 11th day of July, 1854, affirmed to the usual bills of lading, and delivered the same to the shippers of said cargo, copies of which several bills of lading are hereto annexed marked schedules A. and B.

Third. That soon after the said ship with said cargo on board set sail from New Orleans to New York and there in due time, and on or about the 14th day of August, 1854, safely arrived, and the said lard was duly delivered to the said James E. Woodruff & Co., and was by them accepted and received.

Fourth. That by reason of the premises, the said James E. Woodruff, John O. Woodruff, and Robert M. Henning, then composing the said firm of James E. Woodruff & Company, became bound to pay to these libellants the freight of the said merchandise, and also the primage as aforesaid, which amounted in the whole to the sum of one thousand eight hundred and thirty-eight dollars and eleven cents, as is more particularly set forth in the schedule hereto annexed, marked C.

Fifth. That thereafter, the said James E. Woodruff departed this life, and the defendants John O. Woodruff and Robert M. Henning have him survived.

Sixth. That the said co-partners in the lifetime of the said James E. Woodruff, and the said defendants since his death, notwithstanding they have accepted and received the said merchandise, in manner aforesaid, have refused to pay the freight for the same, although often thereto requested and there is now due the libellants for the freight on the said merchandise with primage aforesaid, the sum of one thousand eight hundred and thirty-eight

dollars and eleven cents, with interest from the 14th day of August, 1854.

Seventh. That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this honorable Court.

Wherefore the libellant prays that a citation, in due form of law, according to the course of this honorable Court in cases of admiralty and maritime jurisdiction, may issue against the said John O. Woodruff and Robert M. Henning, and they be cited to appear and answer upon oath all and singular the matters aforesaid, and that this honorable Court would be pleased to decree payment of the freight aforesaid, with interest and costs, and that the libellants may have such other and further relief in the premises as in law and justice they may be entitled to receive.

W. NELSON.

Sworn to before me, this 18th day
of November, 1856.

R. E. STILWELL, *U. S. Com'r.*

GOODMAN & JESUP, *Proctors.*
E. C. BENEDICT, *Advocate.*

Schedule A.

Kennett, Dix & Co., Commission and Forwarding Merchants, New Orleans.

Shipped, in good order and well-conditioned, by Kennett, Dix & Co., for account and risk of whom it may concern, on board the good ship called the Maid of Orleans, whereof E. P. Dennis is Master for the present voyage, now lying at the port of New Orleans and bound for New York, the following articles:

Burrows & Pettiman,			
293	Two hundred and ninety-three bbls.		lard,
M & C 319	Three hundred and nineteen	do	do
Green & Stone, lump,			
205	Two hundred and five	do	do
H 233	Two hundred and thirty-three	do	do
38	Thirty-eight tierces	lard,	
P 23	Twenty-three do	do	
	Seven bbls.	do	
Green & Stone,			
D $\frac{42}{1160}$	Forty-two bbls.	do	

Being marked and numbered as in the margin, which are to be delivered, without delay, in the like good order at the port of New York, (the dangers of the sea and fire only excepted,) unto J. E. Woodruff & Co., or to their assigns, he or they paying freight for the said goods at the rate of $1.15 per bbl. and $1.50 per tierce, with 5 per cent. primage and average accustomed.

In witness whereof, the master or purser of said ship hath

affirmed to three bills of lading, all of this tenor and date, one of which being accomplished the others to stand void.

Dated in New Orleans this 11th day of July, 1854.

Contents unknown.

For the owners,
DAVID McCOURD.

Schedule B.

Shipped, in good order and condition, by Jas. E. Woodruff & Co., on board the ship called the "Maid of Orleans," whereof Dennis is master, now lying in the port of New Orleans and bound for New York.

To say,

W 111 One hundred and eleven tierces lard,
196 One hundred and ninety-six bbls. lard.

Being marked and numbered as in the margin, and are to be delivered, in the like good order and condition, at the port of New York, (the dangers of the navigation and fire only excepted,) unto James E. Woodruff & Co., or to their assigns, he or they paying freight for the said lard $1.15 per barrel, and $1.53 per tierce, with 5 per cent. primage, and average accustomed.

In witness whereof, the master of the said vessel hath affirmed to three bills of lading, all of this tenor and date, one of which being accomplished the others to stand void.

New Orleans, July 11, 1854.

Contents unknown.

For the owners,
DAVID McCOURD.

Schedule C.

Messrs. James E. Woodruff & Co.,
To ship "Maid of Orleans," Dr.

To freight from New Orleans:

1099 Bbls. of lard, freight $1.15 per bbl.,	. .	$1263.85
61 Tierces do do 1.50 per tierce,	. .	91.50
Primage as above,	. . . . .	67.77
111 Tierces of lard, freight $1.53 per tierce,	. .	169.83
196 Bbls. do do 1.15 per bbl.	. .	225.40
Primage as above,	. . . . .	19.76
New York, August 14th, 1854.		$1838.11

Endorsed 14, 19, U. S. District Court, Southern District of New York.

WILLIAM NELSON and Others,
Agents for John O. Woodruff and another.

Libel.

GOODMAN & JESUP, *Proctors for plaintiff.*

Filed, Dec. 8, 1856.

District Court of the United States for the Southern District of New York.

(Filed the 8th day of Dec., 1856.)

Stipulations to Libellant's Costs,

Entered into pursuant to the Rules and Practice of this Court.

Whereas a libel was filed in this Court, on the 8th day of Dec., in the year of our Lord one thousand eight hundred and fifty-six, by William Nelson *et al.* against John O. Woodruff *et al.*, for the reasons and causes in the said libel mentioned, and praying that a citation in due form of law may issue against said respondents, and the said libellant and Wm. Nelson, Jr., surety parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the libellants or the surety, execution may issue against their goods, chattels and lands for the sum of one hundred dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is, bound in the sum of one hundred dollars, conditioned that the libellants above named, shall appear and answer to the cause and to interrogatories, and shall pay all such costs as shall be awarded against them by this Court, or in case of an appeal by the Appellate Court.

WM. NELSON,
By WM. NELSON, Jr., *Agent*,
WM. NELSON, JR.

Taken and acknowledged this 8th day of December, 1856, before me.

GEO. H. BETTS,
U. S. Commissioner.

Southern District of New York, *ss.:*

Wm. Nelson, Jr., party to the above stipulation, being duly sworn, doth depose and say, that he resides in the city of Brooklyn, and that he is worth the sum of two hundred dollars over and above all his just debts and liabilities.

WM. NELSON, JR.

Sworn to this 8th day of December, 1856, before me.

GEO. F. BETTS,
U. S. Commissioner.

Recorded the 8th day of December, 1856.

GEO. F. BETTS, *Clerk.*

The President of the United States of America,

To the Marshal of the Southern District of New York, greeting:

Whereas a libel has been filed in the District Court of the

United States of America for the Southern District of New York, on the eighth day of December, in the year of our Lord one thousand eight hundred and fifty-six, by William Nelson and other libellants, against John O. Woodruff and Robert M. Henning in a certain action civil maritime for freight therein alleged to be due and owing the said libellant, amounting to $1838.11, and praying that a citation may issue against the said respondent pursuant to the rules and practice of this Court.

Now, therefore, we do hereby empower, and strictly charge and command you, the said Marshal, that you cite and admonish the said respondents, if they shall be found in your District, that they be and appear before the said District Court on the twentieth day of January inst., at the City Hall in the city of New York, then and there to answer the said libel, and to make their allegations in that behalf; and have you then and there this writ, with your return thereon.

Witness the Honorable SAMUEL R. BETTS, Judge of said Court, this 14th day of January, in the year of our Lord one thousand eight hundred and fifty-seven, and of our Independence the eighty-first.

GEORGE F. BETTS, *Clerk.*

R. GOODMAN, *Proctor.*

(Endorsed.)
Vol. 14, No. 19.
United States District Court.

William Nelson *et als.*
vs.
John O. Woodruff *et al.*

Citation returnable January 20, 1857.

R. GOODMAN,
Proctor for Libellants.

We hereby agree to appear for the respondents, and to file and perfect an answer to the libel on file on or before the 20th January instant.

BEEBE, DEAN & DONOHUE, *Proctors.*

Jan. 14, 1856.

The President of the United States of America,
To the Marshal of the Southern District of New York, greeting:

Whereas a libel has been filed in the District Court of the United States of America for the Southern District of New York, on the eighteenth day of December, in the year of our Lord one thousand eight hundred and fifty-six, by William Nelson and others against John O. Woodruff and Robert M. Henning, surviving co-partners of James E. Woodruff & Co., in a certain action civil maritime for freight, therein alleged to be due and owing

the said libellants, amounting to $1838.11, with interest, and praying that a citation may issue against the said respondents pursuant to the rules and practice of this Court.

Now, therefore, we do hereby empower, and strictly charge and command you, the said Marshal, as we have before commanded you, that you cite and admonish the said respondents, if they shall be found in your District, that they be and appear before the said District Court on the 10th day of February next, at the City Hall in the city of New York, then and there to answer the said libel, and to make their allegations in that behalf; and have you then and there this writ, with your return thereon.

Witness the Honorable SAMUEL R. BETTS, Judge of said Court, this 28th day of January, in the year of our Lord one thousand eight hundred and fifty-seven, and of our Independence the eighty-first.

GEO. F. BETTS, *Clerk.*

R. GOODMAN, *Proctor for Libellants.*

(Endorsed.)

Vol. 14, No. 19.

United States District Court.

William Nelson, *et als.*
vs.
John O. Woodruff *et al.*

Alias Citation returnable February 10, 1857.

R. GOODMAN,
Proctor for Libellants.

I hereby depute Peter Miller to execute the within process.

ABM. F. HILLYER,
U. S. Marshal.

January 29, 1857.

Filed 10th Februray, 1857.

At a stated term of the District Court of the United States of America for the Southern District of New York, held at the City Hall in the city of New York, on Wednesday, the fourteenth day of January, in the year of our Lord one thousand eight hundred and fifty-seven.

Present—The Honorable SAMUEL R. BETTS, District Judge.

John O. Woodruff and Robert M. Henning,
vs.
William Nelson and another.
Vol. 14, page 19.

On filing citation with the appearance of the respondents' endorsed, on motion of Messrs. Beebe, Dean and Donohue, Proctors for the respondents, it is ordered that the respondents' appearance

be entered, and that they have until the 20th instant to file and perfect their answer to the libel on file.

(Endorsed.)

14, 19.

U. S. District Court, Southern District of N. Y.

John O. Wodruff *et al.*
vs.
William Nelson *et als.*

BEEBE, DEAN & DONOHUE,
for Respondents.

Order, appearance, &c.
Filed 14th January, 1857.

District Court of the United States for the Southern District of New York.

(Filed the eighteenth day of March, 1857.)

Stipulation

Entered into pursuant to the Rules and Practice of this Court.

Whereas a libel was filed in this Court, on the eighth day of December, in the year of our Lord one thousand eight hundred and fifty-six, by William Nelson and others against John O. Woodruff and others, for the reasons and causes in the said libel mentioned, and praying that a citation may issue against the said respondents and the parties hereto hereby consenting that in case of default or contumacy on the part of the respondents or their surety, execution for the sum of one hundred dollars may issue against their goods, chattels and lands:

And whereas, also, an answer has been filed in said cause by said respondents:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is hereby bound in the sum of one hundred dollars, conditioned that the respondents above named shall pay all costs and expenses which shall be awarded against them by the final decree of this Court, or upon an appeal by the Appellate Court.

JOHN O. WOODRUFF.
per W. R. BEEBE.
W. R. BEEBE.

Taken and acknowledged this 18th day of March, A. D. 1857, before me.
GEO. W. MORTON,
U. S. Commissioner.

Southern District of New York, *ss.:*

Welcome R. Beebe, party to the above stipulation, being duly sworn, doth depose and say that he resides in the city of New York, and that he is worth the sum of two hundred dollars over and above all his just debts and liabilities.

W. R. BEEBE.

Sworn to this 18th day of March, 1857,
before me.

GEO. W. MORTON,
U. S. Commissioner.

Recorded 18th March, 1857.
G. F. BETTS, *Clerk.*

Answer to Libel.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern District of New York.

The answer of John O. Woodruff and Robert M. Henning, surviving co-partners of James E. Woodruff, deceased, composing the late firm of James E. Woodruff & Co., merchants, to the libel and complaint of William Nelson, Edward S. Dennis, Francis Bartlett, Sherburne Sears, and Aaron Cohen. And thereupon the respondents allege and respond as follows:

First.—That they have no knowledge as to the facts stated in the first article of said libel, and therefore deny the same.

Second.—That these respondents admit that in the month of June, one thousand eight hundred and fifty-four, the said ship, Maid of Orleans, was lying in the port of New Orleans, and that while she was so lying, "Kennett Dix & Co." did ship on board the said ship the quantity of lard stated in the second article of the said libel, to be carried and conveyed in and on board thereof from the port of New Orleans to the port of New York, and there to be delivered to the order of the said late firm of James E. Woodruff, of which these respondents were co-partners; but these respondents deny that the said second article truly sets forth the contracts under which the same was shipped, but that such contracts are truly stated and set forth in the Schedules A. and B. annexed to said libel.

Third.—These respondents further admit that the said ship did sail shortly thereafter from the port of New Orleans with the said lard on board, and did safely arrive at said port, and that a part of said lard was delivered to said firm of James E. Woodruff & Co., but these respondents deny that the whole of said lard was delivered to the said firm.

Fourth.—These respondents deny the contents of the fourth article of the said libel, but they admit *that* had the said lard been

delivered in the state and condition set forth in bills of lading annexed to said libel, then the said firm of James E. Woodruff & Co. would have become liable to pay the freight and primage set forth in said article.

Fifth.—These respondents admit the contents of the fifth article of the said libel to be true.

Sixth.—These respondents further admit that the said firm of James E. Woodruff & Co., in the lifetime of the said James E. Woodruff, and these respondents since the decease of the said James E. Woodruff, have refused to pay the said freight and primage, or any part thereof.

Seventh.—These respondents allege that by bills of lading hereinbefore referred to, the libellants, if they were in truth and in fact owners of the said ship, did acknowledge to have received such lard on board the said ship "Maid of Orleans," in good order and well conditioned, and they did therein and thereby agree to deliver the same to the firm of James E. Woodruff & Co., in like good order and condition, dangers of navigation and fire only excepted, and that duplicates of such bills of lading were given to the shippers of the said lard, and were by them forwarded to the said firm of James E. Woodruff & Co., and were by them received, and relying upon which, the said firm made large advances thereon to the said shippers of the said lard, and did receive the same in good faith.

Eighth.—These respondents further allege that the libellants, or their agents, took so little and such bad care of the said lard, in the receiving of the same on board, in the stowing of the same in the transportation and conveyance thereof, in the care and custody thereof, and in its discharge, that a large quantity thereof became and was wholly lost to these respondents, to wit, about sixty thousand pounds, of the value of six thousand dollars, and upwards; and these respondents allege that the said lard was not lost from the perils of the sea, or from fire.

Ninth.—These respondents further allege that from these causes the respondents became and were excused from, and are not liable for the payment of freight or primage. On the contrary, the libellants (if such owners) became indebted and liable to pay to the respondents, as such survivors, a large sum of money, to wit, the sum of six thousand dollars and upwards; and these respondents claim to recoup, as against the said freight and primage, so much of the damages so sustained as shall liquidate and discharge the said freight and primage so claimed by the libellants.

Tenth.—That all and singular the premises are true, and within the jurisdiction of this Honorable Court.

Wherefore these respondents pray that this Honorable Court would be pleased to pronounce against the libel aforesaid, to

decree the recoupment aforesaid, and such other relief as to justice shall seem meet. And also to condemn the libellants in costs.

R. M. HENNING.

Sworn to before me, this 17th day of March, 1857.

[SEAL.] ELIAS DUSENBERRY, *Notary Public.*

BEEBE, DEAN & DONOHUE, *Proctors.*

BEEBE, *Advocate.*

(Endorsed.) 14, 19. U. S. District Court. John O. Woodruff and Robert M. Henning, ads. William Nelson and others. Answer. Beebe, Dean & Donohue, Proctors.

Filed March 18, 1857.

Decree for Libellant, and reference to Commissioner.

At a Stated Term of the District Court of the United States of America, for the Southern District of New York, held at the City Hall, in the City of New York, on Thursday, the twelfth day of March, in the year of our Lord one thousand eight hundred and fifty-seven.

Present—The Honorable SAMUEL R. BETTS, District Judge.

William Nelson *et als.*
vs.
John O. Woodruff and Robert M. Henning, surviving co-partners, &c.

The time to file and perfect the respondent's answer having expired, and no answer having been filed, on motion of R. Goodman, proctor for the libellants, It is ordered, that the default of the respondent in not answering, be and the same is hereby entered.

And on like motion, It is ordered, that it be referred to one of the Commissioners of this Court, to ascertain and compute the amount due the libellants for freight, and to report thereon to this Court with all convenient speed.

(Endorsed.)
14-19—U. S. Dist. Ct., South. Dist of N. Y.

William Nelson, *et als.*,
vs.
John O. Woodruff and Robert M. Henning, &c,

R. GOODMAN, Pro. for Libellants.
Introductory for default and reference.
Filed 12th March, 1859.

Replication.

To the Honorable Samuel R. Betts Judge of the District Court of the United States for the Southern District of New York:

The replication of William Nelson, Edward S. Dennis, Francis Bartlett, Sherburne Sears and Aaron Cohen, libellants, to the answer of John O. Woodruff and Robert M. Henning, surviving co-partners of James E. Woodruff, deceased, composing the late firm of James E. Woodruff & Co., defendants allege that they, the said libellants, will aver, maintain, and prove their libel to be true, certain, and sufficient, and that the answer of the said defendants is uncertain, untrue, and insufficient, and they humbly pray, as in and by their said libel, they have already prayed.

GOODMAN & JESUP,
Proctors for Libellants.

(Endorsed.)
14–19. U. S. District Court.
William Nelson, *et als.*,
vs.
John O. Woodruff and another survivor.
Replication.

GOODMAN & JESUP
Proctors for Libellants.

Filed April 13, 1857.

Extract from Rough Minutes.

U. S. District Court.
William Nelson, *et als.*,
vs.
John O. Woodruff, *et al.*

John O. Woodruff, *et al.*,
vs.
William Nelson, *et als.*

1858, March 9. These causes being called in their order on the calender, ordered hearing.
Pleadings read.
Evidence for libellants and Respondents, Nelson, *et als.:*
See page 15.—John Wright, sworn.
See page 15.—Walter S. Meldrum, sworn.

March 10. These causes being still on hearing, the respondents and libellants, Woodruff, *et al.*, proceed with their testimony.
Evidence for respondents and libellants, Woodruff, *et al.:*
See page 15.—Abraham E. Dubois, sworn.
See page 16.—John C. Redmond, affirmed.
See page 17.—Joseph M. Bensell, "
See page 17.—John H. Wood, "

See page 17.—Elbert A. Dibble, sworn.
See page 18.—Edward Curran, "
See pages 18 and 38.—Deposition of Thomas A. Dix, read.
See pages 18 and 40.— " " Joseph P. Sloan, "
See pages 18 and 42.— " " Thomas Derren, "
See pages 18 and 44.— " " Patrick Murphy, "
See pages 18 and 47.— " " Jacob Mussina, "
See pages 18 and 48.— " " Charles Stanninger, "

Evidence for libellants and respondents, Nelson, *et als.:*

See pages 19 and 27.—Deposition of Edward Shinkle read.
See pages 19 and 28.— " " George Woodley "
See pages 19 and 30.— " " George R. Beard "
See pages 19 and 31.— " " Cohen Sorier "

March 11. These cases being still on hearing, the libellants and respondents, Nelson, *et als.*, proceeded with their testimony.

Evidence for the libellants and respondents, Nelson, *et als.:*

See page 19.—Deposition of Edward P. Dennis read.
See page 19.—John Wright, recalled.
See page 20.—Samuel Caudler, sworn.
See page 20.—Francis S. Genau, "
See page 21.—James H. Yeadon, "
See page 21.—John B. Phillips, "

Evidence for respondents and libellants, Woodruff, *et al.*

See page 21.—George McGrath, sworn.
See page 22.—Fisher A. Fisher, "

Mr. Goodman argues for libellants and respondents, Nelson, *et als.*

These causes being still on hearing, Mr. Goodman continues his argument for the libellants and respondents, Nelson, *et als.*

Mr. Donohue argues for respondents and libell'ts, Woodruff, *et al.*
Mr. Beebe " " " " " "
Mr. Benedict " " libellants and respondents, Nelson, *et als.*

U. S. DISTRICT COURT. TUESDAY, MARCH 9TH, 1858.

William Nelson, *et als.*,
vs.
John O. Woodruff, *et al.*,

GOODMAN & JESUP, for libellants.
BEEBE, DEAN & DONOHUE, for respondents.

John O. Woodruff, *et al.*,
vs.
William Nelson, *et als.*

Cross-suits.
Same counsel.

Pleadings read.
MR. GOODMAN for libellants.

July 11th, 1854. Bills of Lading, Schooner A. Kennett, Dix & Co., to respondents or consignees.

bbls. of lard.
cases "

Same date, 1467 pckgs. lard in both bills.

JOHN WRIGHT, (*sworn.*) In August, 1854, was delivery clerk of Wm. Nelson & Co., agents of ship Maid of Orleans; witness superintendent of ship; one thousand four hundred and sixty-seven packages brought in ship consigned to Woodruff & Co., and delivered to them in this port between 19th and 22d August, 1854.

Cross-examined.—Packages delivered in carts; witness took count of all of them at pier 48 East river or near it; began delivery early in morning, and continued delivery till completed. Witness was stationed on the dock; part of lard was carted to Bedell & Titus, and part to Jeffreys; some shipped and some placed in store house; witness took receipts of delivery. [Produces them.] Vide page .

Witness told Mr. Jeffreys that he had taken four packages not receipted for, but that matter was afterwards arranged, as all charged for had been delivered to Jeffreys.

Ship carried a general cargo: Hides, tobacco, cotton, sugar, wool, &c. [Produces cargo book.]

WALTER S. MELDRUM, (*sworn*) Clerk of libellants in 1854; has bill of freight of above goods $1838 11.

Libellants rest.

WEDNESDAY, MARCH 10TH. *Continued.*

DEFENCE.

ABRAHAM E. DUBOIS, (*sworn.*) Carman since 1840, in a large business; knew ship Maid of Orleans in 1854; superintended carting the lard in question; saw principal part after it was discharged on dock; it leaked very badly whilst landing from ship, and after it was landed on deck; never saw a cargo discharged in so bad a condition before or since; several packages were entirely empty. A day or two after lard was stored in a cellar, witness made a memorandum in writing of its state. He found a good many in cellar entirely empty (eleven.) Also cart took about ten casks empty to cooper's shop, but may not exceed five. (Gives marks of some.) Did not register those casks which had not lost more than one-quarter.

Thinks four coopers were on the deck coopering for Woodruff & Co.; ship had her coopers at work on board; did not see any of them working on the dock; had two spring carts used in

carting the lard and handled it carefully; it was carted by his men, black men.

Cross-examined.—These cartmen were not licensed; recollects seeing four coopers working on deck; lard was rolled up to near head of pier about one hundred yards; where coopering commenced and continued to the ship; all he saw came out of the ship; thinks he was engaged at job three days; the weather was warm, hot, as usual in August, might be called very hot; the memorandum was taken from casks at storehouse, front part of cellar; was then hard enough to enable witness to determine quantity in casks; was three or four days after it was landed. The casks were stored on their bilges in cellar, a few were standing on their heads; saw chimes of one or two casks broken; could not tell whether were shrunk; determined whether lard was out by lifting casks up by hand; did not open any of them, were lifted by laborers in warehouse; does not know whether any lard came out of barrels; it run off them freely whilst carting from ship; does not know whether from ship or not; witness was not then licensed; his compensation was altogether by piece—six cents for barrels, and eight for this cargo, and that is his standing price for like work; thinks he carted lard that summer but cannot say that he hauled any in August of that year brought from New Orleans. The memorandum in pencil mark on paper is in his handwriting.

Re-direct.—Not on board vessel after she went to work; was before; but did not see lard in hold; barrels weigh two hundred to two hundred and fifty pounds; tierces three hundred and fifty to four hundred pounds; observed very little leakage of lard in cellar; seemed to be small stains at places as of one-quarter of a pound; where lard had lain and hardened.

JOHN C. REDMOND, (*sworn.*) Book-keeper for Woodruff & Co., in 1854; recollect the cargo of lard in question, from Kennett, Dix & Co., and John O. Woodruff & Co.; bills of lading were received by mail prior to arrival of ship; the respondents made advances on the bills of lading before arrival of lard. (Invoices produced.) About twenty-eight thousand dollars was advanced on the two consignments; lard then worth nine and one-half to ten and one-quarter cents per pound; about fifty thousand pounds difference between invoice weight and inspector's returns.

The first draft by Kennett, Dix & Co., was drawn on respondent's house direct on account of the shipment; the other was drawn by New Orleans House (of which respondents were part,) was drawn on invoice of lard of that house; both drafts were prior to arrival of ship; the drafts were accepted absolutely and passed to credit of drawers at seventy day; the same as if cash had been paid by respondents.

Cross-examined.—Was in practice of receiving consignments from the two New Orleans concerns on commission.

JOSEPH M. BENSELL, (*sworn.*) Cooper forty years; has coopered frequently, casks of lard imported from New Orleans to New York; coopered this cargo; was present at times whilst work was doing; hoops were loose on casks; condition of cargo was very slack; the worst he ever saw; widely so; had two to four men employed coopering; employed by respondents; worked after landed on dock; did none on the ship; witness work was done after ship's cooper had finished his work; he worked in hold; saw his men on the dock in one or two instances; witness coopered about four hundred casks; cannot say any were entirely empty; but witness found some so jammed and broken that they could not be coopered; thinks casks were of a good quality except being slack, *i. e.,* hoops started; were well-bound iron; should not think there is any quality in oil to injure casks, except it will when liquid tend to shrink the casks; it requires a great deal of care; pressure increases difficulty from heat, *i. e.,* conduces to press open the joints and produce leaking.

Cross-examination.—Thinks heat was one of the causes of injury to cargo, for the lard thus becomes liquid, and endangers leakage. Casks were full wooden bound. Saw on deck leaking out of bilge and at head. Hooped from bilges to head; is full bound. More hurt than good to nail hoops. Produces leaking from nail holes. Ten casks were emptied into others on dock and took them to his shop. Does not know what became of them. The weather was hot at time. Hotter place of storing lard, the less should be the storage. Three or more casks were pressed flat on side.

JOHN WOOD, (*sworn.*) City Weigher fifteen years. Has weighed lard frequently; no particular recollection of any arriving in summer. Has however, weighed some coming in summer, mostly imported in winter. Weighed in store-house, nine hundred or one thousand packages of this cargo. (Puts in his inspection returns. (Returns of Wood, Exhibit 1.) A portion of the cargo leaked largely. Thinks found one hundred and fifty casks very light weight, fifty—one hundred or more lbs., (two hundred lbs., some) short. Did not weigh casks entirely empty. Found some so. They are marked on his return. Casks should weigh two hundred and forty to two hundred and eighty pounds. Tierces run three hundred and twenty pounds, and three hundred and seventy pounds. Not usual to find more than five to ten pounds wantage in casks of lard.

Cross-examined.—Witness weighed lard in November, 1854, in store-house, South street, thinks it was all tierced up in the cellar. Thinks several casks were empty at the time. Don't re-

collect ever before weighing a cargo imported in August. Leakage from loose hoops, (whether from shrinking of staves or otherwise,) might be indifferently from the bilge or head.

Re-direct.—Saw nothing to indicate any great leaking in the store house. Some grease on the floor.

ELBERT E. DIBBLE, (*sworn*). Weigher twelve years. Cartman seven years. Has weighed and handled lard considerably. Knows this ship. Weighed part of the consignment in 1854. (See Returns, Ext. 2.) Weighed some at ship, and some at tobacco inspection, it was in a bad condition. Loss heavy. Greater than he had before known. Should consider two to three per cent. ordinary wastage. Five per cent. higher in summer shipment of lard from N. Orleans. This was much higher than that. Has weighed lard in all seasons of the year.

Cross-examined.—Has weighed in August, lard, but cannot say when it arrived. Weighed at warehouses. The wastage would vary according to weather. Means *leakage* by *wastage*. Saw lot imported in a steamer from New Orleans, which came out about as bad as this. Not so much of it. Which came from New Orleans in June, he believes.

All he weighed in this case at ship. It was in a liquid state, like oil. Has often weighed oil in that condition. Barrels twenty-one to twenty-three inches at bilge. Tierces, twenty-three or twenty-four, to twenty-eight inches.

EDWARD CURRAN, (*sworn.*) Cooper twelve years in Bensell's employment, and coopered lard on dock in 1854. Has coopered lard before and since. Considered this lot in bad order. Some casks loose. Some staves broken.

Commission to New Orleans, April 19, 1855.

THOMAS A. DIX, (subject to legal exceptions.)

1. Commission and forwarding business.
2. Shipped lard.
3. Lard to be laden on board evening and morning, to avoid heat of sun.
4. Packages were coopered and were full, and in good order when shipped, and were put on board in cool of day.
6. Some packages remained on Levee some days.
8. Casks in good order when shipped.
10. Weather very warm.

Cross-examined, 3d cross.—In connection with direct interrogatory six.

JOSEPH S. SLOAN.—Produce Broker.

Interrogatory 5.—Effect of sun on lard shipped at New Orleans very injurious.

Interrogatory 9.—Lard shipped early in morning and late in evening.

Interrogatory 10.—Weather usually hotter in July, 1854, than usual. Packages injured by heat of sun on staves.

THOMAS DERNEN.—Cooper.

Interrogatory 3.—Packages in good condition, and seemed to be full.

Interrogatory 4.—Weather very hot in July.

Interrogatory 6.—Hauled to vessel early in morning, and late in the evening.

Interrogatory 7.—Lard expressed on levee from Saturday to Monday, lying in tiers.

Cross-interrogatory 2.—Hoops well secured.

Cross-interrogatory 3.—Lard hauled morning and evening.

Cross-interrogatory 5.—Saw lard lying on levee on Sunday.

PATRICK MURPHY.—Drayman.

Interrogatory 3.—Packages appeared full and in good order, when hauled to ship. Sent by Kennett and Dix.

Interrogatory 6.—In good condition. Hauled early in the morning.

Interrogatory 7.—Packages on levee.

Cross 3d Interrogatory.—Weather very hot.

Cross 5th Interrogatery.—Lard on levee over night.

JACOB MUSSINA.—Produce Broker.

CHARLES STANMEYER.—Cooper.

Interrogatory 13.—Packages well coopered and full, except two wanting, fifty barrels each. Hauled early in morning and late in day.

Defence.

Commission to New Orleans, January 9, 1856.

EDWARD SHINKLE.—Stevedore.

Interrogatory 3.—Stowed the lard evening and morning. Taken on board as soon as taken from drays. Very hot weather.

GEORGE WOODLEY.—Stevedore, (taken same time.)

Interrogatory 6.—Packages greasy and leaky, and partly empty. Weather unusually hot.

GEORGE R. BEARD.—Warehouseman.

Interrogatory 4.—Lard shipped from that warehouse in good order, when shipped.

Cross-examined.—3d Interrogatory.—Packages in good order, except greasy, &c.

COHEN SORIA, Clerk.

Interrogatory 6—Laden with dispatch morning and evening.

THURSDAY, MARCH 11—(*Continued.*)

EDWARD S. DENNIS—Deposition offered by respondents. Objected to for want of compliance with articles of cons. or of any notice to proctors of libellants of filing.

WELCOME R. BEEBE (*sworn.*) Witness arranged by consent with person in office of proctors of respondents, to examine the deponent at 3½ P. M. of 14th instant, in office of witness. Witness requested examination to be postponed, and to be conducted at office of witness at half past 3, P. M. That was never done, and understands deposition was taken *ex-parte* before commissioner.

Cross-examined. Never knew deposition was filed; knew it had been taken.

Ordered, That deposition be read, subject to all legal exceptions, to regularity, &c. (Objection overruled.)

EDWARD P. DENNIS. (Deposition.) Master of vessel.

JOHN WRIGHT (again.) Was present all the time of unloading the ship. Three or four coopers employed on dock. Woodruff & Co. had two. Attended chiefly to casks marked W, with circle, (two hundred and fifty or three hundred.) Those did not go to warehouse, were sold and reshipped on Emerald Isle. Ten empty packages were taken off the dock; those were the only empty ones; they had been started; they were of those marked W, a circle. Contents had been emptied into casks of same mark; one was injured apparently by pressure. Witness examined it carefully; a thin stave appeared to have been pressed in and lapsed; saw no other in that condition. Those casks were removed by a carman not in employ of Nelson & Son. All the oil not sent in Emerald Isle went to Burdet & Curtis's warehouse. The oil was removed from head of pier. Witness was at ship when hatches were opened. Ship had general cargo. Weather was very hot; hold appeared still hotter; steam came out. Witness went between decks to look for a package, but found heat so great could not remain below. There were two coopers belonging to ship, one at gangway and one in hold, attending to discharge of lard; it was discharged rapidly to a warehouse half a block off. The lard was in a liquid state when discharged; saw it run out between the staves. Is still in employment of libellants; they are agents of a New Orleans line, consisting of about twelve ships, with regular sailing days. Casks, except one, were in good order, other than hoops were started in some for purpose of emptying. Does not know that any of the packages were entirely empty; packages were slack; does not call it in very good order. Saw nothing stowed on lard, thinks nothing was; lard formed a sort

of bulkhead up to main hatch from aft; could see upper tier; the casks were tierced up from floor to deck regularly. There was some space between deck or top tier; not wide enough to admit a barrel.

Cross-examined.—Could not see entirely to bottom of tier, but saw two or three tiers down body of lard. Could see to bottom of facing of lard; it was flush on face of lard. There was cargo stowed very near to face of lard; does not know what cargo it was.

Re direct.—Delivered some parcels of lard during summer in small lots, not exceeding one hundred packages at a time.

SAMUEL CANDLER (*sworn*)—Marine Surveyor. Surveyed this cargo in August, 1854. Made seven surveys on cargo, and one on hatch. Saw the lard, it was stowed in after lower hold, in four or five tiers, on bilge and scantling, in ordinary way and best; bilge and bilge not so well. Witness went below; it was very hot there. Barrels looked very fair, but slack, the staves were shrunk. Looked all about alike, top casks looked as well as bottom. Made no note of any barrels being more injured than others. Attributed state to great heat and shrinking of barrels. Surveyed ship; she had appearance of having encountered bad weather, sails, &c. Has surveyed a great many ships laden with lard; this cargo could not have been stowed better. Has surveyed cargoes of lard also in hot summer weather.

Cross-examined.—Supposes his average surveys have been three to five daily. Went on board this ship before her hatches were removed, and made a survey of them. Recollects kind of cargo between decks—tobacco, cotton, wool. Does not recollect he was present when hatches were removed from lower hold; is sure he saw lard removed from lower hold; is sure he saw lard removed from there. Saw no cargo stowed abaft of lard; was there; went down after-hatch, thinks space above lard was large enough to stow another tier. Saw nothing stowed above the lard so as to touch it. Recollects more about this cargo than usual, because there was so much leakage. No distinction between storage of barrels and casks. Was below where packages were discharged. The packages were dunnaged over ballast.

Re-direct.—Made daily, at time of making survey, a memorandum of particulars not now with him.

FRANCIS S. GEREAN, (*sworn*). Coopered this cargo for libellants; was occasionally on board ship whilst cargo was discharging; two coopers under his directions, one at gangway on deck, the other in the hold of ship; witness saw the lard in hold before delivered; the hoops very loose and barrels were leaking from sides and heads; intensely hot below, considerably hotter than on deck; leakage he judges was from shrinking of packages;

the lard was liquid, that tends to shrink staves, and hoops become loose; only chime hoops were nailed; packages were well stowed; does not think it possible to stow better; ground tier was dunnaged as far as he judged; bilges of barrels did not touch; no barrel rested on a single one but on others; been thirty years familiar with stowing cargoes.

Cross-examined.—Has been at sea, 1826; seven, eight or ten years to New Orleans, and once to Havre; never since been mariner; assisted them in stowing vessels thirteen and fourteen years ago; his men coopered tobacco and sugar; coopered about one hundred and fifty packages of lard; worked three days on lard; was at ship first day; they worked on lard; not at other days; was in hold before lard was discharged; other cask goods were stowed near together; not so as to form common bulkheads; no recollect of dunnage except under ground tier.

Re-direct.—Not aware of dunnaging above ground tier, nor between.

Re-cross examined.—Pressure will tend to increase leak of lard liquified; wishes to state that he regards *bilge and cantling* to be the same that Mr. Yeadon to be *bilge and header.*

JAMES H. YEADON, (expert,) (*sworn*).—Never saw cargo; been stevedore sixteen or seventeen years; accustomed to load and discharge lard shipped from Southern ports; this cargo was well stowed; could not have been better in ship carrying other freight; according to description given by Capt. Candler, four or five tiers not too high.

Cross examinined.—Bilge and bilge bad stowage with middle dunnage, so also, when bilge and cantling stowed; dunnage is used under chime or in liquor barrels, or lard brought in liquid state, (describes bilge and bilge, and bilge and header, and bilge and cantling.)

Re-direct.—Ground floor requires dunnage and upper tiers; some in upper tiers, but not so much; by many, all the methods are termed indifferently *bilge and header,* and *bilge and cantling.*

Re-cross examined.—Hoops are always dunnaged in stowing.

JOHN B. PHILLIPS, (expert,) (*sworn.*)—Stevedore eleven or twelve years; lard is considered liquid goods and is stowed by itself in ship, and is stowed *bilge and cantling,* and *bilge and bilge, bilge and header;* you cannot stow bilge and headers very well unless vessel is filled full; *bilge and half bilge* is a good way, but consumes room.

Cross-examined.—Does not dunnage *bilge and header* must chock or dunnage in stowing *bilge and cantling?*

For Respondents.

GEORGE MCGRATH, (*sworn*).—Deals in lard, buyer and seller

and refiner; in November, 1854, witness sold fifteen hundred barrels as a broker of that cargo, as he understood in warehouse; the packages were ordinary Western lard pigs; some not full; if packages good, like these, there ought to be not more than five per cent. for leakage in hot weather and in liquid state; but more pressure the more leakage; lard in hot weather is kept in cellars, and he considers three tiers as high as prudent, as it tends to break the casks; the loss in this lot was fifty per cent. larger than he ever knew; has seen a great many lots.

Cross-examined.—No personal knowlege that this was libellants; the lard was in hard state when he first saw; has seen lard in liquid state, not as if melted by fire; made so by heat in holds of ship.

This was fair lard, not prime all of it, but a good average lot; supposes method of storage to be same in warehouse as on ship; wastage of five per cent., he speaks of, is of oil coming in here in summer seasons and very hot weather, and sold on deck as it comes out of ships from New Orleans.

FISHER A. FISHER, (*sworn,*) dealer in lard, grease, and tallow. Has dealt very largely in oil for several years; has received it all temperatures of weather. Lard brought in vessels in hot weather will naturally leak *ten* pounds out of a package; not usual to have wastage over *five* pounds per barrel, (difference of weight of barrel and cask about seventy-five pounds); stores lard in cellar; three to five tiers; lard of reasonable quality, in a good package, will leak only about the same as oil; no reason for any greater wastage; does not think putting liquid lard into barrels would tend to produce leakage, not so much as pressure of barrel upon each other, in barrels stored five or six tiers high; calculate no loss in winter, and in hot weather not to exceed five or ten pounds to package; a barrel filled full of cold oil will leak more or less in liquifying in the barrel; the fuller the barrel, and greater the heat melting the lard, the greater will be the leakage, owing to pressure on staves.

Exhibit No. 3—Ship's Register.

Mr. Goodman argues the cause for libellants.
Mr. Donohue argues the cause for respondents.
Mr. Beebe argues for the cause for respondents.
Mr. Benedict argues the cause for libellants.

Cur. adv. vult.

N. Y. Common Pleas.

Interrogatories to be administered to Edward Schinkle, George Woodley, George R. Beard, and Cohen Soria, witnesses to be produced, sworn, and examined on behalf of the plaintiffs in this

action, now pending in the Court of Common Pleas in and for the city and county of New York, wherein William Nelson and others are plaintiffs and James E. Woodruff and others are defendants, before C. B. Singleton, a commissioner under and by virtue of a commission hereto annexed.

First Interrogatory.—What is your name, age, and occupation, and where do you reside?

Second Interrogatory.—Do you know the parties to this suit, and which of them?

Third Interrogatory (to all except Mr. Beard and Mr. Soria.)—Do you know the ship "Maid of Orleans," and were you in July, or at any time, in the summer of 1854, and at what time, employed about or cognizant of any packages of lard being shipped on board of her for her voyage to New York? If yea, state the quantity of lard, number of packages, &c., when and how taken on board, its condition, and all the particulars attending the shipment, and putting on board the vessel.

Fourth Interrogatory.—For whom was the lard shipped, and by whom?

Fifth Interrogatory (addressed to Messrs. Beard and Soria.)—What connection had you with the said lard? To whom and by whom was it shipped? Where was it before shipment? What was the condition of it at that time? How was the temperature at New Orleans in July, 1854? How, as compared with other seasons? What is the usual condition of lard in the summer season?

Sixth Interrogatory (to all the witnesses.)—Do you know of any other matter, or thing, touching the matters and things inquired of, that may tend to the benefit or advantage of the plaintiffs herein? and if yea, state the same fully and at large, as if you had been particularly interrogated thereto.

R. GOODMAN, *Plaintiffs' Attorney.*

The foregoing direct interrogatories are hereby settled by consent.

R. GOODMAN, *For Plaintiffs.*
DUSENBERRY & VAN WAGENEN,
For Defendant.

(Endorsed.)
New York Common Pleas:

William Nelson and others,
agt.
James E. Woodruff and others.

Interrogatories and notice.

Please take notice that the interrogatories, of which within is a copy, will be presented for settlement to one of the Judges of this

Court at Chambers thereof at the City Hall, in the city of New York, on the 22d of December inst., at 10 A. M. of that day.

Yours, &c.,

R. GOODMAN, *for Plaintiffs.*

To DUSENBERRY & VAN WAGENEN, Esqrs., *for Defendants.*

New York Common Pleas.

Cross interrogatories to be administered to Edward Schinkle, George Woodley, George R. Beard and Cohen Soria, witnesses to be produced, sworn and examined on behalf of the plaintiffs in this action, now pending in the Court of Common Pleas, in and for the city and county of New York, wherein William Nelson and others are plaintiffs, and James E. Woodruff, et al., defendants, by way of cross-examination.

First Cross-Interrogatory. (To all except Beard and Soria.)—If in answer to the third direct interrogatory you answer, that you were employed about or cognizant of any packages of lard being shipped on board the "Maid of Orleans," on the voyage referred to, state who employed you and how you know that the lard was shipped? What marks were on those packages? Whether you were present when it was taken on board? Did you make at the time any examination of the packages, or any memorandum of what you have stated in relation to said shipment and the manner in which it was made, and the condition, and number, and marks of the packages of lard? State how long you have been in the employ or connection with those who employed you in relation to this shipment of *lard?* Was there anything in connection with this shipment which caused you to remember distinctly the matters which you have stated, or is your recollection imperfect?

Second Cross-Interrogatory.—How do you know for whom the lard was shipped? State your means of knowledge.

Third Cross-Interrogatory. (Addressed to Beard and Soria.)—What connection in business have you with the plaintiffs in this suit, or the agents of the Maid of Orleans, and how long have you been so employed? State how you knew the condition of the lard before shipment, and where it was before it was shipped? Did you examine the lard or the packages at the time you saw them before shipment? Were they opened? If yea, state how many were opened and how particularly you examined them? What were the marks upon them?

Fourth Cross-Interrogatory. (To all the witnesses.)—Do you know any other matter or thing of benefit or advantage to the defendants? if yea, state particularly.

DUSENBERRY & VAN WAGENEN,
Defendants' Attorneys.

I consent to the settlement of the cross-interrogatories herein as above.

R. GOODMAN, *Plaintiffs' Attorney.*

The people of the State of New York, to Charles B. Singleton, Esq.

Know ye, That we, with full faith in your prudence and competency, have appointed you commissioner, and by these presents do authorize you to examine George R. Beard, Edward Schinkle, George Woodley and Cohen Soria, as witnesses in a cause pending in the Court of Common pleas, for the city and county of New York, wherein William Nelson, Edward S. Dennis, Francis Burnett, Sherburne Sears and Aaron Cohen are plaintiffs, and James E. Woodruff, John O. Woodruff and Robert R. Henning are defendants, on the part of the plaintiffs on oath, upon the interrogatories annexed to this commission, and to take and certify the depositions of the witnesses and return the same according to the directions hereunto annexed.

Witness, J. P. Ingraham, Esq., first judge of said Court of Common Pleas, at the City Hall, in the city of New York, the 26th day of December, one thousand eight hundred and fifty-five.

BENJ. H. JARVIS,
Clerk of Common Pleas.

R. GOODMAN, *Plaintiffs' Attorney.*

Direction for Executing the Commission.

The person to whom such commission shall be directed, or any one of them, unless otherwise expressly directed therein, shall execute the same as follows:

1. They, or any one of them, shall publicly administer an oath to the witnesses named in the commission, that the answer given by such witnesses to the interrogatories proposed to them, shall be the truth, the whole truth, and nothing but the truth.

2. They shall cause the examination of each witness to be reduced to writing, and to be subscribed by him and certified by such of the commissioners as are present at the taking of the same.

3. If any exhibits are produced and proved before them, they shall be annexed to the depositions to which they relate, and shall in like manner be subscribed by the witness proving the same, and shall be certified by the commissioners.

4. The commissioners shall subscribe their names to each sheet of the depositions taken by them; they shall annex all the depositions and exhibits of the commission, upon which their return shall be endorsed; and they shall close them up under their seals, and shall address the same, when so closed, to the clerk of the court from which the commission issued, or to the clerk of the county in which the venue shall be laid, as shall have been directed on the commission, at his place of residence.

5. If there is a direction on the commission to return the same

by mail, they shall immediately deposit the packet, so directed, in the nearest post office.

6. If there be a direction on the commission to return the same by an agent of the party who sued out the same, the packet so directed shall be delivered to such agent.

The above is an extract from the Revised Statutes of the State of New York, (4th Ed.) vol. 2, page 639, relating to the taking of testimony out of the State.

This commission, when executed, is to be returned to the Clerk of the Court of Common Pleas, in and for the city and county of New York, care of R. Goodman, Esq., New York city.

The execution of this commission appears in certain schedules hereunto annexed.

CHARLES B. SINGLETON, *Com'r.*

Instructions to Commissioners.

Annexed to the commission is an extract from the Statutes of the State of New York, relative to the taking of testimony out of the State, which extract is directed by law to be annexed to the Commission. But as it does not comprise everything necessary to be attended to by the Commissioners, they are requested to observe the following more ample Instructions:

I. All the Commissioners named in the Commission, should have notice of the time and place of executing it; and if any of them do not act, let the fact that they were notified, or could not be notified, and the reasons for their not acting, be stated.

II. The Commission must be executed by the Commissioner named therein.

III. The acting Commissioner will examine the witnesses separately, after publicly administering to them the following oath or affirmation:

"You do swear, that the answers which shall be given by you to the interrogatories proposed to you, shall be the truth, the whole truth, and nothing but the truth. So help you God."

The oath shall be administered (except in cases hereinafter mentioned) by the witness laying his hand upon, and kissing the Gospels.

But if the witness shall desire it, he shall be permitted to swear in the following form: "You do swear in the presence of the ever living God," and while so swearing, he may or may not hold up his hand, in his discretion.

Or if the witness shall declare that he has conscientious scruples against taking an oath, or swearing in any form, he shall be permitted to make his affirmation in the following form: "You do solemnly, sincerely, and truly declare and affirm," omitting the words, "So help you God."

IV. The general style or title of the depositions must be drawn up in the following manner:

"Deposition of witnesses, produced, sworn (or affirmed) and examined, the day of in the year one thousand eight hundred and at under and by virtue of a Commission issued out of the in a certain cause therein depending and at issue between defendant as follows:

A. B. of (insert his place of residence and occupation) aged years and upwards, being duly and publicly sworn (or affirmed) pursuant to the directions hereto annexed, and examined on the part of the doth depose and say as follows: First—To the first interrogatory, he saith, &c. [Insert the witness' answer.] Second—To the second interrogatory he saith, &c., and so on throughout.

If he cannot answer, let him say that he knoweth not.

V. If there be any cross-interrogatories, the witness will go on thus:

First—To the first cross-interrogatory, he saith, &c., and so on throughout.

VI. When the witness has finished his deposition, let him subscribe it, and the acting Commissioner will certify as follows:

Examination taken, reduced to writing, and by the witness subscribed and sworn to this day of 18 before

Commissioner.

VII. If any papers or exhibits are produced and proved, they must be annexed to the depositions in which they are referred to, and be subscribed by the witness, and be endorsed by the acting Commissioners, in this manner:

"At the execution of a Commission for the examination of witnesses, between defendant this paper writing was produced and shown to (insert the witness' name) and by him deposed unto at the time of his examination, before

Commissioner.

VIII. The acting Commissioners will sign their names to each half sheet of the depositions and exhibits.

IX. If an interpreter is employed, one of the Commissioners will administer to him the following oath, and certify thereto:

"You do solemnly swear, that you will truly and faithfully interpret the oath and interrogatories to be administered to a witness now to be examined, out of the English language into the language, and that you will truly and faithfully interpret the answers of the said thereto, out of the into the English language."

Let the depositions be subscribed by the interpreter as well as by witness, and certified by the acting Commissioners, as follows:

Examination taken, reduced to writing, subscribed by the witness and by the sworn interpreter, and sworn to by the witness, this day of 18 before

Commissioner.

the ship, and that at the time it was taken on board, the weather was hotter than he had ever known it during a residence of twenty-five years in this city; and that he was present during the whole time this lard was being taken on board.

First Cross-Interrogatory.—To the first cross-interrogatory, he saith: He was employed by the master of the vessel, as stevedore, to load the vessel. He knows the lard was shipped, because he saw it put on board the vessel; he cannot tell what were the marks on the packages. He says he was present when all of it was taken on board. He did not at the time make any examination of the packages, except as he noticed them while being rolled on board, and those fifteen or twenty leaking, which he spoke of in his direct examination, or answers to the direct interrogatories. He made no memorandum of what he has stated in relation to said shipment, and the manner in which it was made, and the condition and marks of said packages of lard; but he made a memorandum of the number by which he was paid for the stowage of the vessel. He has been employed by the master of said vessel about two or three years, as stevedore, during which time he has been master of said vessel; there was no matter or thing in connection with the shipment of this lard, which caused him to remember distinctly the matters which he has stated, but his recollection of what he has stated is nevertheless clear and distinct.

Second Cross-Interrogatory.—To the second cross-interrogatory, he saith: He does not know for whom the lard was shipped, and has stated nothing to that point.

Fourth Cross-Interrogatory.—To the fourth cross-interrogatory, he saith: He knows nothing, not already stated, that would be of any benefit to the defendants, and further he saith not.

EDWARD SCHINKLE.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this the 9th day of January, 1856, before me, the undersigned Commissioner,

CHARLES B. SINGLETON.
Commissioner.

And also at the same time and place appeared before me, GEORGE WOODLEY, a resident of the city of New Orleans, Louisiana, aged about thirty-seven years, and upwards, being duly and publicly *sworn*, pursuant to the directions hereto annexed, and examined on the part of the plaintiffs, doth depose and say as follows:

1st. To the first interrogatory, he saith: His name is George Woodley; age, upwards of thirty-seven years; occupation, is foreman for a stevedore, and he now resides in the said city of New Orleans, Louisiana.

2d. To the second interrogatory, he saith: He knows Aaron Cohen, S. Sears, E. S. Dennis, and John O. Woodruff, by sight, and none of the others does he know, even by sight.

3d. To the third interrogatory, he saith: He knows the ship Maid of Orleans. He was employed as foreman of the stevedore's men, in July, 1854, while said vessel was being loaded, and he recollects the lard going into said vessel; this was the voyage from this city (New Orleans) to New York. He says there were from one thousand to fifteen hundred packages of lard taken on board said vessel for said voyage. These packages were taken on board said vessel in the month of July, 1854, as already stated. It was taken on board in the usual way, as soon as it was rolled off the drays. Some of this lard was very greasy and dirty; some of the packages were leaking, and some of the packages half out; all of it was more or less dirty and greasy. The stage on which it was rolled to the vessel was saturated with grease, proceeding from the packages. He thinks he saw some twenty or twenty-five packages which appeared to he half out; he was notified of this fact by the men who were employed in putting it on board the vessel. All this lard appeared to be more or less liquid, which he ascertained by handling the packages. This lard was properly and carefully handled and stored. It was all stowed in the after end of the ship, by itself; there was nothing on the top of it.

Fourth. To the fourth interogatory he saith, He knoweth not.

Sixth. To the sixth interrogatory, he saith, While this lard was being shipped the weather was unusually hot; the lard, after it was taken to the shop, was not exposed to the sun. He was very much annoyed by the captain of the vessel who was urging him to get it on board and not let it be exposed to the sun, as there were a few barrels that could not be taken on board immediately, when the dray would bring down as much as thirty or forty barrels at a time. He was annoyed by the master because he was taking the lard on board as fast as it could go down the ship's hatchway—not more than fifteen minutes were necessary to *take in* thirty or forty barrels of lard.

First Cross-Interrogatory. To the first cross-interrogatory, he saith: He was employed by Mr. Schinkle, the preceding witness, and the lard was shipped because he saw it taken on board the ship. He cannot say what marks were upon the packages, because he took no notice of them. He was present part of the time while it was being taken on board. He did not make any memorandum of what he had stated. He made an examination of the packages in order to ascertain their condition, and when he found any which needed coopering, he had them put aside for that purpose. He has been in the employ of Mr. Schinkle five years and is still in his service as foreman. He says there is no matter or thing in connection with this shipment which causes him

to remember distinctly the matters which he has stated except the trouble he had with it. He recollects distinctly what he has stated.

Second Cross-Interrogatory. To the second cross interrogatory he saith, he knoweth not.

Fourth Cross-Interrogatory. To the fourth cross-interrogatory he saith, he knoweth not, and further deponent saith not.

GEORGE WOODLEY.

Examination taken, reduced to writing, and by the witness sworn and subscribed to, this the 9th day of January, 1856, before me

CHARLES B. SINGLETON, *Commissioner.*

And also on this the 14th day of January, 1856, at the same place, appeared before me, the undersigned Commissioner, George R. Beard, a resident of the city of New Orleans, Louisiana, aged upwards of thirty eight years of age, being duly and publicly sworn pursuant to the directions here o annexed, and examined on the part of the plaintiffs, doth depose and say as follows:

First. To the first interrogatory he saith, his age is forty years; occupation, a warehouse keeper, and he resides in the city of New Orleans, Louisiana.

Second. To the second interrogatory, he saith: he knows Nelson Sears, John O. Woodruff, and Aaron Cohen, but does not know the others.

Fourth. To the fourth intorrogatory, he saith: the lard was shipped from the warehouses of George R. Beard & Co., of which firm deponent was a member. It was shipped by Kennett, Dix & Co., of this city. He does not know from whom it was shipped, and he does not know to whom it was shipped.

Fifth. To the fifth interrogatory, he saith: the lard was stored with the firm of George R. Beard & Co., of which he was a member. Does not know to whom it was shipped. It was shipped by Kennett, Dix & Co., as already stated. The lard before shipment was in our warehouse, where it had been stored from fifteen to forty days, the lard, at the time of shipment, was in apparently good order, as all of it had been coopered before it was shipped. The weather was very warm, in July, 1854, in this city. The weather was much warmer in 1854 than previous seasons. The condition of lard in the summer season depends on the quality, some lard will keep hard during the entire summer if kept in a proper place; inferior lard will run very much; superior lard will not waste or leak much if kept in a proper place, all lard, in the summer time, will lose more or less. He does not know the quality of the lard above alluded to.

Sixth. To the Sixth Interrogatory, he saith: At the time this lard was in our store, there was about seven or eight thousand

packages of lard in our warehouses, from which there was considerable leakage, but he cannot say that it came from this lot of lard; warm weather affects lard injuriously when being shipped from one port to another.

Second Cross-Interrogatory. To the second cross-interrogatory he saith: He says he knows the lard was shipped by Kennett, Dix & Co., because they were the parties who stored it with his firm aforesaid.

Third Cross-Interrogatory. To the third cross interrogatory he saith: He has no connection in business with any of the parties or their agents, and has had none. He knows all he has stated concerning its condition, because it was in his warehouses and shipped from there. He examined the packages before shipment, but did not examine the lard itself. The packages seemed to be in good order except being greasy as all lard packages are at that season of the year. He thinks the packages were not opened; there were four different marks on the lard, viz., B. & P. LEMP, or Lemp, M. & C. and H., these are the marks by which we received them but he cannot say that they were shipped by the same marks.

Fourth Cross-Interrogatory. To the fourth cross-interrogatory he saith: He knoweth not.

GEO. R. BEARD.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this, the 4th day of January, 1856, before me.

CHARLES B. SINGLETON,
Commissioner.

And also, on this the 15th day January, 1856, at the same place mentioned in the caption of this testimony appeared before me, the undersigned, Commissioner, Cohen Soria, a resident of the City of New Orleans, Louisiana, aged upwards of twenty-five years, who being duly and publicly sworn pursuant to the directions hereto annexed and examined on the part of the plaintiffs, doth depose and say as follows:

First. To the first interrogatory he saith: His name is Cohen Soria, occupation, Clerk, age, twenty-five years, and resides in the City of New Orleans, Louisana.

Second. To the second interrogatory he saith: He knows all the parties to this suit except Jas. E. Woodruff, Francis Burnett and Robt. N. Henning.

Fourth. To the fourth interrogatory he saith: He made the contract for the shipment of said lard from this Port to New York; he acted for the agents of the ship "Maid or Orleans," in making said contract. The lard was shipped by Kennett, Dix & Co.,

that is one lot and consigned to Woodruff & Co., New York. Another lot at the same time and on the same vessel was shipped by John O. Woodruff & Co., and consigned to the same parties. Part of the lard was, previous to shipment, in the warehouses of Geo. R. Beard & Co., that is the lot of Kennett, Dix & Co. He does not know where the other was stowed or shipped from; he does not know what its condition was at the time of shipment or previous thereto; the weather was very warm in New Orleans in July, 1854; it (the weather) was much warmer than during other seasons; he does not know what the usual condition of lard is in the summer season, because he has never dealt in lard and has never had occasion to notice it.

Sixth.—To the sixth interrogatory he saith:—He was frequently at the ship while she was loading for this voyage, and he knows the lard went down evening and morning, and was put on board with despatch, and was not exposed to the heat of the sun, and further he knoweth not.

Second Cross-Interrogatory. To the second cross-interrogatory, he saith: He knows for whom the land was shipped from the face of the bill of lading.

Third Cross-Interrogatory. To the third cross-interrogatory he saith: He was clerk for the Agent of the ship Maid of Orleans, and had been in his employ for nine or ten years, and is still in his employ. His name is Aaron Cohen. He did not know what the condition of the lard was before shipment, but he knows one lot was stored in the warehouses of Geo. R. Beard & Co., because he was so informed by Geo. R. Beard. He never saw the lard before the same was taken to the said ship. He saw the lard at the ship when taken there for the purpose of being taken on board. He did not examine the lard, except so far as to discover that the outside of the packages looked greasy, this he discovered in passing, and casually looking at the lard. The packages were not to his knowledge opened. He did not notice the marks particularly; and, if he ever knew them, he has forgotten them.

Fourth Cross-Interrogatory. To the fourth cross-interrogatory he saith: He knoweth not.

COHEN SORIA.

Examination taken and reduced to writing, and by the witness subscribed and sworn to, this the 15th day of January, 1856, before me.

CHARLES B. SINGLETON,
Commissioner.

I, Charles B. Singleton, the undersigned Commissioner, do hereby certify, that I caused Edward Schinkel, George Woodley, George R. Beard, and Cohen Soria, witnesses in the annexed commission, named to appear at my office in the building numbered

78, Camp street, located on the corner of Camp and Natchez streets, in the City of New Orleans, on the days named in the caption to the testimony of each witness; and after publicly administering to each of said witnesses the oath required in the directions accompanying the Commission hereto annexed, conclude in the following words:—"You do swear, that the answers which shall "be given by you to the interrogatories propounded you, shall be "the truth, the whole truth, and nothing but the truth, so help you "God." The said oath was administered to each of said witnesses, by each laying his hand upon and kissing the Gospels. That I then proceeded to examine each witness separate and apart from every person, by reading in a clear and distinct manner each interrogatory, and cross-interrogatory, *and cross-interrogatory*, to each witness, and his answer thereto. I immediately in his presence, and without turning aside to anything else, reduced to writing, with my own hand. And after the answers were thus reduced to writing, I read the same in a clear and audible voice to each witness, who agreed to the same as being the true and correct answers given by him, and taken down by me as aforesaid. And I caused each of said witnesses to sign with his own hand, his answers thus given. I then made up the testimony annexed, the same to the accompanying commission, directions and interrogatories, and cross-interrogatories, preparatory to sending the same thus made up by mail to the Court from whence said Commission issued, in pursuance to the directions thereto annexed.

In witness whereof I have hereunto set my hand and seal, this the 15th day of January, 1856.

CHARLES B. SINGLETON, [SEAL.]
Commissioner.

(Endorsed.)

Woodruff *vs.* Nelson, *et al.* · Testimony for plaintiffs on Commission.

R. GOODMAN.

Interrogatories, to be administered to Charles Stanmeyer, Thos. Dennan, and Patrick Murphy, witnesses to be produced, sworn and examined on behalf of James E. Woodruff and others, defendants in a certain suit now pending in the Court of Common Pleas in and for the City, County, and State of New York, before the Judges thereof, at the suit of William Nelson and others, plaintiffs, before C. B. Singleton, Commissioner, under and by virtue of a commission hereto annexed.

First Interrogatory—What is your name, age, and occupation, and where do you reside?

Second Interrogatory—Do you know the parties to this suit; if yea, how long have you known them?

Third Interrogatory—Do you know the ship Maid of Orleans, and were you employed to cooper any barrels or tierces of lard

that were shipped on board said ship, in the month of July, 1854, by whom were you employed, at what time, in what condition were the said packages at the time, how were they coopered by you if coopered at all, and were said packages full or not at that time? State fully and particularly.

Fourth Interrogatory—Was the weather at that time, July, 1854, very warm or otherwise, and at what time in the day was said lard handled or moved?

Fifth Interrogatory—Were you in the month of July, 1854, employed in hauling or draying a lot of lard in barrels and tierces to the ship Maid of Orleans, then lying at the city of New Orleans, and referred to in this suit? If yea, state by whom you were employed, what amount of lard was drayed, and by whom were you assisted in the work. State fully and particularly.

Sixth Interrogatory—What was the condition of these barrels and tierces at the time they were removed or handled by you, and at what time of the day the same were hauled to the vessel, whether morning or afternoon, or both, and how long a time each day were you so occupied in hauling them, and where were they left when taken from the drays? State fully and particularly.

Seventh Interrogatory—Do you know what was done with said packages of lard when taken to the vessel by the drays? If you say you do, then state whether they were immediately taken on board the ship Maid of Orleans or not, and if not, how long did they remain on the levee before they were placed on board the ship? State fully and particularly all that you know in answer to the question.

Eighth Interrogatory—Do you know who stowed away this lard on board the ship Maid of Orleans; if yea, state by whom it was done, how long a time was occupied in stowing the same, in what manner it was done, whether in tiers or not, and how dunnaged? State fully and particularly your knowledge of the matters herein referred to.

Ninth Interrogatory—Do you know any other matter or thing touching the matters in question, that may tend to the benefit or advantage of the defendants? If yea, declare fully and at large, as if you had been particularly interrogated thereto

To Thomas Dix,
Joseph Sloan,
Jacob Mussina.

First Interrogatory—What is your name, age, and business, and where is your said business located, where do you work?

Second Interrogatory—Do you know the defendants in this suit; if yea, how long have you known them, and did you at any time in the month of July, 1854, ship on board the ship Maid of Orleans, consigned to the defendants, any lard? And if yea,

state the time of such shipment, and the number of packages so shipped.

Third Interrogatory—Did you make the freight engagement or contract for the shipment of said lard? If yea, state what were the terms and conditions thereof. State fully and particularly, and state with whom the contract was made.

Fourth Interrogatory.—Do you know what was the condition of the packages, containing the said lard, when delivered to the Maid of Orleans at the time of said delivery? At what time of the day were said packages delivered upon the levee, and whether or not said packages were full when delivered on the levee?

Fifth Interrogatory.—For how long a period of time, and how extensively have you been engaged in buying, selling, and shipping lard, and what effect does the heat of the sun in your climate in the month of July have upon packages of lard exposed in the open air to the rays of the sun during the day?

Sixth Interrogatory.—Do you know whether the packages of lard, shipped by the Maid of Orleans, were taken on board the ship as soon as hauled upon the levee? and if you answer that they were not so taken on board, state how long they remained on the levee after they were delivered there before being taken on board, and what quantity was exposed to the sun by reason of not being immediately put on board the vessel. State fully and particularly your knowledge, and means of knowledge, in answer to this question.

Seventh Interrogatory.—Were the packages of lard coopered previous to their shipment? If yea, state by whom it was done, and in what manner it was done.

Eighth Interrogatory.—Do you know in what part of the Maid of Orleans the said lard was stowed, and in what manner, and by whom, it was stored? whether it was tiered? and if so, how high it was tiered?

Ninth Interrogatory.—Do you know what is the custom in the city of New Orleans during the warm season in shipping lard, as to the parts of the day in which it is done? If there is any custom, whether it is taken on board the vessel immediately upon its delivery on the levee to avoid exposure to the sun? State fully and particularly.

Tenth Interrogatory.—What was the state of the weather in July, 1854, in New Orleans as to heat? State fully and particularly.

Eleventh Interrogatory.—Do you know any other matter, or thing, touching the matters in question that may tend to the benefit or advantage of the defendants herein? If yea, declare fully and at large, as if you had been particularly interrogated thereto.

New York Common Pleas.

Cross-interrogatories to be administered to Charles Stanmeyer Thomas Dennan, and Patrick Murphy, witnesses for the defendants, by way of cross-examination, in a suit in the Court of Common Pleas in and for the city and county of New York, in which William Nelson and others are plaintiffs and James E. Woodruff and others are defendants, before C. B. Singleton, Commissioner.

First Cross-Interrogatory.—In what way are you connected with, or related to, the defendants in this suit, or either of them, or were you at the time of the matters inquired of?

Second Cross-Interrogatory.—How many barrels or tierces did you cooper, and when? In what place did you cooper the same? What were the materials with which you coopered? How long have you been in the business of coopering?

Third Cross-Interrogatory.—What are your means of knowledge of the matter in July, 1854? How do you recollect the day, or time of day, the lard was hauled?

Fourth Cross-Interrogatory.—How do you know the condition of the barrels or tierces, as inquired of in the sixth direct interrogatory, or of the time of day the same were hauled to the vessel? State all your means of information.

Fifth Cross-Interrogatory.—If, in answer to the seventh direct interrogatory, you say you do, state how you know what was done with said packages when taken to the vessel? State all your means of information as to the time they were on the levee, and the names of your informants. Where was the Maid of Orleans lying? How long had she been in? Was she loading or unloading? Whom did you notify when the lard was delivered on the levee? Did you see it there afterwards, and when? Did you give any notice to any persons on board the ship where it was, and to whom? Is it the custom for goods to lay on the levee until they can be put on board? Were not these goods put on board with the usual dispatch?

Sixth Cross-Interrogatory.—If in answer to the eighth interrogatory, you state you do know who stored the lard inquired of, state how you know; who informed you; did you see it stored, and if any, how much of it? who else was present? on what part of the ship was it stored?

Seventh Cross-Interrogatory.—If, in answer to the ninth interrogatory, you state any matters, state particularly your means of knowledge and information, and how derived.

R. GOODMAN,
for Plaintiff.

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N. Y. Common Pleas.

Cross-interrogatories, &c., Thomas Dix, Joseph Sloan, and Jacob Mussina, &c.

First Cross-Interrogatory.—How are you related to the defendants, or either of them? or how connected with them in business? or how were you at the time inquired of in the direct interrogatories.

Second Cross-Interrogatory.—If you say in answer to the third direct interrogatory, you did make the freight engagements, state if the same, or any part was in writing, and produce the writing.

Third Cross-Interrogatory.—State your means of knowledge, if you answer the fourth interrogatory, how, and from whom you acquired the information.

Fourth Cross-Interrogatory.—If you answer the sixth direct interrogatory, state how you know when the packages were taken on board the ship, or how long they remained on the levee. Are there any warehouses on the levee? Was the ship loading or unloading? how long did she lie there from the time she entered port to her departure on the voyage inquired of? Did you see any one connected with the ship in relation to the lard, (and whom, and when, and where,) after the lard was delivered on the levee? How do you know the packages of lard were coopered? How do you know in what part of the ship the lard was stored? Did you see it? Where is lard usually stored in the ship? Did you see it after it was all stored?

Fifth Cross-Interrogatory.—How do you know the custom as to shipping lard, as inquired of in the ninth interrogatory? Who informed you of it? How long has it been the custom? Can it be taken on board while the ship is unloading. Is not the lard sometimes delivered before the ship gets to the levee?

Sixth Cross-Interrogatory.—How do you know the state of the weather in July, 1854? Was it different in that year from ordinary years? Is there any cause for you recollecting that month particularly?

Seventh Cross-Interrogatory.—If you answer to the last direct interrogatory, state all your means of knowledge, and from whom you derived your information.

R. GOODMAN,
for Plaintiff.

(Endorsed.)

New York Common Pleas.

William Nelson, *et als.*,
vs.
James E. Woodruff, *et al.*

Copies of interrogatories and cross-interrogatories of witnesses in New Orleans.

DEPOSITIONS OF WITNESSES produced, sworn, and examined the nineteenth day of April, in the year one thousand eight hundred and fifty-five, at my office, in the building No. 78 Camp street, situate on the corner of Camp and Natchez streets, in the city of New Orleans, in the State of Louisiana, under and by virtue of a commission issued out of the Court of Common Pleas in and for the City, County, and State of New York, in a certain cause therein depending and at issue between William Nelson, Edward S. Dennis, Francis Burritt, Sherbourne Sears, and Aaron Cohen, plaintiffs, and James E. Woodruff, John O. Woodruff, and Robert M. Henning, defendants, as follows: Thomas A. Dix, a resident of this city, and a merchant, aged forty years and upwards, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined separately on the part of the defendants, doth depose and say as follows:

CHARLES B. SINGLETON,
Commissioner.

First. To the first interrogatory he saith: my name is Thomas I. Dix; my age is forty-two. I am a commission and forwarding merchant. My business is located in the city of New Orleans, Louisiana, where I work.

Second. To the second interrogatory he saith. I know John O. Woodruff only. I have known him about six or eight years. I shipped on the Maid of Orleans, on or about the 10th day of July, 1854, one thousand and ninety-nine barrels, and sixty-one tierces of lard, consigned to the defendants at New York.

Third. To the third interrogatory he saith: I made the freight engagement with David M. McCord and Cohen Soria, clerks of Aaron Cohen, agent of the ship Maid or Orleans. The rate of freight agreed upon between us cents per barrel and cents per tierce. It was agreed that the lard should be sent to the vessel, in the morning and evening of each day, until the whole of the lard was shipped. And it was expressly agreed on their part that the lard should be taken on board the ship as fast as the same was sent to the vessel, to avoid exposing the same to the sun, which was known to be very injurious to the lard.

Fourth. To the fourth interrogatory he saith: The packages containing the lard were in good order at the time the same were delivered to the said vessel. They had been previously well coopered before being sent to the vessel, and after they were sent to the vessel a cooper was sent for the purpose of seeing that they were in complete order and good condition. The packages were delivered to said vessel in the cool of the day, morning and evening, and the said packages were full when so delivered.

Fifth. To the fifth interrogatory he saith: I have been engaged in the business of buying and selling lard in this city

during the last two years. The effect of the sun upon lard exposed to it in this city is to cause the lard to melt, and run out of the packages, and it also causes the lard to become rancid much sooner than when not thus exposed to the rays of the sun in the open air. The sun also causes the hoops to "start" from the boards, owing to the shrinking of the wood.

Sixth. To the sixth interrogatory he saith: Some of the packages were not taken on board the said vessel as soon as hauled upon the levee, but remained on the levee some two days or more. The quantity thus exposed to the sun on the levee, I cannot state.

Seventh. To the seventh interrogatory he saith: The packages were well coopered previous to being shipped.

Eighth. To the eighth interrogatory he saith: I know not.

Ninth. To the ninth interrogatory he saith: It is the custom in this city to ship lard in the cool of the day, morning and evening, and to take it on board as soon as delivered to the ship in order to avoid exposure to the sun.

Tenth. To the tenth interrogatory he saith: The weather in July, 1854 was very warm.

Eleventh. To the eleventh interrogatory he saith: I do not know anything further than already stated.

Cross-Interrogatories.

First. To the first cross-interrogatory he saith: I am not related to the defendants, or either of them. I am not connected with them in business, except occasionally I make shipments to them, nor was I at the time of said shipment.

Second. To the second cross-interrogatory he saith: The freight engagement above spoken of was a verbal one, as is customary in this city, and not a written one.

Third. To the third cross-interrogatory he saith: I acquired my information from my boss drayman, Patrick Welch, and my cooper.

Fourth.—To the fourth cross-interrogatory, he saith: I acquired my knowledge from the persons named in my answer to the last preceding interrogatory. There are no warehouses on the levee proper. The ship was loading for New York at the time the lard was sent to her. I cannot state how long she remained in port. I saw no one connected with the ship after the lard was delivered to the vessel on the levee. I learned that the packages of lard were coopered from the persons named in my answer to the third cross-interrogatory, and from having paid the cooper's bill for the same. I did not see the lard after it was taken on board the ship, and cannot state in what part of the ship it was stowed. Lard is usually stowed in the hold of a vessel.

Fifth.—To the fifth cross-interrogatory, he saith: I know the existence of such custom from my experience in business, and its universal recognition by all persons engaged in that business. It

has always been the custom since I have been in business in the city; the custom was fully recognized when I first came to this city. I cannot state whether lard can be taken on board a ship while the ship is being unloaded; it might under particular circumstances. I have no experience in loading ships. I am not aware that lard is ever delivered to a ship before the ship gets to the levee. I have never heard of a case of the kind, and I would think any man crazy who would thus deliver lard.

Sixth.—To the sixth cross interrogatory, he saith: I know the weather was in July, 1854, very warm, from the fact that I was in this city at the time. There is no cause particularly of my recollecting the weather in July, 1854; the weather in that month is always warm in this city.

Seventh.—To the seventh cross interrogatory, he saith: I communicated no information in my answer to the eleventh direct interrogatory, and further I know not.

THO. J. DIX.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this the 19th day of April, 1855.

And at my office aforesaid on this, the 21st day of April, 1855, appeared before me Joseph S. Sloan, a resident of this city, and by occupation a produce-broker, aged upwards of forty-four years, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the defendants, doth depose and say as follows:

First.—To the first interrogatory he saith: His name is Joseph S. Sloan, aged upwards of forty-four years; his business is a produce-broker, and that his business is located in the city of New Orleans, Louisiana, where he works.

Second.—To the second interrogatory he saith: He knows the defendants to this suit, and has known them about six years. He did not make any shipment of lard, consigned to the defendants, for the ship "Maid of Orleans," in the month of July, 1854.

Third.—To the third interrogatory, he saith: He knoweth not.

Fourth.—To the fourth interrogatory, he saith: He knoweth not.

Fifth.—To the fifth interrogatory, he saith: He has been engaged in buying, selling and shipping lard during the last fifteen years, and during all that time he was engaged quite extensively, and for the last five years very extensively indeed. That the house of De la Rue & Stearn, of which he is a member, buys and ships the largest portion of the lard brought, and shipped about seventy thousand barrels of lard. The effect of the sun upon lard in the open air, in this city, in the month of July, is very in-

jurious. That he never ships lard except early in the morning and late in the evening, in order to avoid the very injurious effect of the sun upon it. That occasionally he buys lard on the levee, which has never been in store in this city, and lard thus bought is necessarily exposed to the sun more or less.

Sixth. To the Sixth Interrogatory, he saith: He knoweth not.

Seventh. To the Seventh Interrogatory, he saith: He knoweth not.

Eighth. To the Eighth Interrogatory, he saith: He knoweth not.

Ninth. To the Ninth Interrogatory, he saith: It is the custom in this City to ship lard very early in the morning and late in the evening, and when hauled to the ship or ships it is expected that the same will be immediately taken on board, and such is the custom in this port. When shipping lard, he frequently visits the vessels receiving the same to ascertain whether they comply with this custom. That it is the custom of thus shipping lard very early in the morning and late in the evening and taking the same immediately on board the vessels for the express purpose of avoiding the very injurious effect of the sun on the lard, and for no other purpose.

Tenth. To the Tenth Interrogatory, he saith: That the weather in July, 1854, was excessively warm, a great deal warmer than it was usually in this city during that month for some years past.

Eleventh. To the Eleventh Interrogatory, he saith: Lard exposed to the rays of the sun in the month of July in this city, becomes very soft, and escapes from the packages, which are shrunk by the effect of the sun upon them. The loss on lard thus exposed is usually very great.

Cross Interrogatories.

First. To the First Cross-Interrogatory, he saith: He is not related to the defendants in any manner whatever, neither is he now, nor was he in July, 1854, connected with them in business. He is not related to the defendants or either of them, and was in no manner connected with them, or either of them, in business at the time enquired of in the direct interrogatories.

Second. To the Second Cross-Interrogatory, he saith: He has not said that he made the freight engagement in answer to the third.

Third. To the Third Cross-Interrogatory, he saith: He did not answer the fourth interrogatory except in the negative.

Fourth. To the Fourth Cross-Interrogatory, he saith: He answered the fourth interrogatory in the negative.

Fifth. To the Fifth Cross-Interrogatory, he saith: He knows the custom from his long experience in the business, no one informed him of it, for he observed the custom by seeing it observed by all those engaged in shipping lard. It was the custom about

nineteen years ago when he first came to this city; the custom was then in full force at that time; lard might be taken on board while the ship was unloading under certain circumstances; it might be temporarily stowed between decks; he never knew any lard to be delivered to a ship before she reached the levee; it may have been done but thinks it imprudent even in winter.

Sixth. To the Sixth Cross-Interrogatory, he saith: He recollects that the month of July, 1854, was very hot, from the very fact of its being exceedingly warm, and also from the fact that he did during said month, and often since, speak of the heat of that month.

Seventh, To the Seventh Cross-Interrogatory, he saith: His means of knowledge is his actual observation and long experience in the business.

JAS. S. SLOAN.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this, the 21st day of April, 1855.

CHARLES B. SINGLETON,
Commissioner.

And at my office aforesaid, on this, the 23d day of April, 1855, appeared before me, Thomas Dennen, a resident of this City, and by occupation a Cooper, aged upwards of thirty-five years, and being duly and publicly sworn, pursuant to the directions hereto annexed, and examined separately on the part of the defendants doth depose and say follows:

First. To the First Interrogatory, he saith: His name is Thomas Dennen, aged above thirty-five years, by occupation a Cooper, and resides in the City of New Orleans, Louisiana.

Second To the second interrogatory he saith: That he knows none of the parties to this suit except John O. Woodruff. Has known him by sight ten or twelve years. Does not recollect the exact time.

Third. To the third interrogatory he saith: He knows the ship "Maid of Orleans." He was employed in the month of July, 1854, to cooper some barrels and teirces of lard that were shipped in said vessel. He was employed by Mr. Thos. J. Dix, of the firm of Kennett, Dix & Co., in said month of July, 1854. The packages were in good condition, except an occasional one which required a little driving. The packages required very little coopering, and what were coopered, were well coopered. He cannot state positively whether all the packages were full, but from their appearance, they seemed to be full. When the last lard was hauled to the "Maid of Orleans," it was in splendid condition.

Fourth. To the fourth interrogatory he saith: That the weather during the month of July, 1854, in this City was very hot.

Fifth. To the fifth interrogatory he saith: That he knoweth not. He was not employed to dray the lard.

Sixth. To the sixth interrogatory he saith: He did not haul the lard to the vessel, but, that he saw the drayman employed for that purpose hauling it. It was hauled to the vessel early in the morning, and late in the evening of each day.

Seventh. To the seventh interrogatory he saith: He sent a boy to the vessel on a Saturday to cooper one barrel; and, that the mate was not pleased with the manner this boy coopered the barrel; and, that he went to the vessel early on Monday morning, and found still on the levee, exposed to the sun, a considerable quantity of lard which had been hauled to the said vessel on the Saturday previous and the days previous thereto. This lard was placed in tiers on the levee. The exact quantity he cannot give, but there were two or three pretty long tiers laying close to the side of the ship. This lard had been on the levee from Saturday until Monday. That he remarked to the mate that the lard thus exposed was loosing very much.

Eighth. To the eighth interrogatory he saith: He knoweth not.

Ninth. To the ninth interrogatory he saith: He knows nothing more about this matter than he has already stated.

Cross-Interrogatories.

First. To the first cross-interrogatory he saith: He was not at the time of said shipment connected with the defendants or either of them in any manner whatever, neither has he been since.

Second. To the second cross-interrogatory he saith: All the barrels were nailed, and any of the packages which required driving were stripped, and the hoops driven on tight. He means by all the barrels, all the packages were nailed in order to keep the hoops from slipping. All the packages were coopered in the Montgomery Warehouse, except the one barrel coopered on the Levee, as stated above. He used the ordinary cooper's adze; and what hoops were supplied, were made out of the ordinary hickory poles used for that purpose. He has carried on a cooper's shop on his own account about five years. He has worked at the business as journeyman about three years. He served as apprentice to the business four years.

Third. To the third cross-interrogatory he saith: He recollects the weather in July, 1854, was hot, because he felt it to be so. He recollects the lard was hauled in the morning and evening of each day, as stated above, just as he would any other fact he knew and had not forgotten.

Fourth. To the fourth cross-interrogatory he saith: He has stated nothing in regard to the condition of the lard in his answer to the sixth interrogatory, and that he recollects the time of day the same was hauled just as he does any other fact not forgotten

by him. His means of information consists in his seeing the lard hauled.

Fifth.—To the fifth cross-interrogatory, he saith: That in his answer to the seventh interrogatory, he stated that he saw the lard on the levee early in the morning, on Monday before any had been hauled on said Monday to the ship, and as none of the lard had been hauled to the ship on the previous Sunday he knows the lard he saw on the levee early on Monday morning, as stated before, had been hauled there on the previous Saturday, or days previous thereto. The "Maid of Orleans," was lying nearly abreast of the Vegetable Market, in the second district of this city. She was loading at the time he saw the lard thus exposed. It is customary to leave goods on the levee, until they can be taken on board. And it is also customary for vessels to receive lard early in the morning and late in the evening, and to take the same immediately aboard the vessels, in order to avoid the injurious effects of the sun upon the lard. This lot of lard was not taken on board the Maid of Orleans, with the usual dispatch.

Sixth.—To the sixth cross-interrogatory he saith: He could not answer the eighth interrogatory, except to express his ignorance of the matters inquired of.

Seventh.—To the seventh cross-interrogatory he saith: He answered the ninth interrogatory, in the negative. He communicated no information in answer thereto.

THOMAS DERNEN.

Examination taken reduced to writing, and by the witness subscribed and sworn to, this the 23d day of April, 1855.

CHARLES B. SINGLETON,
Commissioner.

And at my office aforesaid, on this the 24th day of April, 1855, appeared before me Patrick Murphy, a resident of this city, and by occupation a drayman, aged upwards of nineteen years, and being duly and publicly sworn, pursuant to the directions hereto annexed, and examined separately, on the part of the defendants, doth depose and say as follows:

First.—To the first interrogatory he saith: His name is Patrick Murphy, age upwards of nineteen years, occupation a drayman, and resides in the city of New Orleans, Louisiana.

Second.—To the second interrogatory he saith: He does not know any of the parties to this suit.

Third.—To the third interrogatory, he saith: He knows the ship "Maid of Orleans," was not employed to cooper any barrels shipped on board. He was employed by Kennett, Dix & Co., to haul a lot of lard to said vessel, in the month of July, 1854. The packages seemed to be in good order, and from the way they handled, the said packages seemed to be full.

Fourth.—To the fourth interrogatory, he saith: The weather in July, 1854, was very hot. The lard was hauled to the said vessel very early in the morning, and very late in the evening of each day.

Fifth.—To the fifth interrogatory he saith: He was employed to haul the lot of lard inquired of, in the month of July, 1854, to the ship "Maid of Orleans," then lying in the port of New Orleans. He was employed by Kennett, Dix & Co., merchants of this city. There were about twelve hundred barrels and tierces altogether, the exact number he cannot now remember. He was assisted to haul this lot of lard by four or five other draymen.

Sixth.—To sixth interrogatory, he saith: The barrels and tierces when hauled by him and the man employed by him for that purpose were in good condition, being well coopered, and light previous to being taken to the said vessel, none of the lard was hauled later than ten o'clock in the morning of each day, and he did not begin to haul any in the evening until between three and four o'clock in each evening. The first load each evening reached the vessel about four o'clock. All the lard was delivered to those in charge of said vessel, very close to the vessel, not more than thirty to forty feet distant from the "Maid of Orleans," the same being landed at the same vessel as near as those in charge of her desired the same to be placed.

Seventh.—To the seventh interrogatory he saith, that many of said packages hauled in the morning, remained on the levee exposed to the sun until next morning, and the greater part of said packages hauled in the evening, remained thus exposed on the levee until the evening of the next day. Some of them might have remained longer. He never saw lard thus exposed at that season of the year. The lard when delivered to the ship was in fine condition, except one barrel, which was coopered after it was taken to the ship.

Eighth.—To the eighth interrogatory he saith, he does not know who stored this lard, and cannot tell how long it was in being stored, or how long it was stored. That after finishing draying the lard he didn't go to the vessel any more, and cannot tell how long it remained on the levee before it was taken on board the vessel and stored away.

Ninth.—To the ninth interrogatory he saith, that lard thus exposed to the hot sun will injure and waste away very much. And further he saith not.

Cross-Interrogatories.

First.—To the first cross-interrogatory he saith, he is not at this time connected with or related to the defendants in this suit, or either of them, and has never been in any manner whatever.

Second.—To the second cross-interrogatory he saith, he did not cooper the barrels or tierces or either.

Third.—To the third cross-interrogatory he saith, he recollects the weather was in the month of July, 1854, very warm, because he felt the heat on many occasions during that month and has not forgotten the fact. He recollects it just as he does any other fact he has not forgotten. He recollects the time of the day the lard was hauled because he hauled a portion himself and superintended the hauling of the entire lot.

Fourth.—To the fourth cross-interrogatory he saith, he knows the condition of the barrels and tierces from having seen and examined the same, and also from having assisted to haul them. He also knows the time of day they were hauled because he hauled a portion of the lot and superintended the hauling of the entire lot.

Fifth.—To the fifth cross-interrogatory he saith, he knows the packages of lard were left on the levee, as stated in his answer to the seventh direct interrogatory, from having seen the same thus exposed and from observing the fact; no one informed him of it. He saw it himself. The "Maid of Orleans" was lying about the vegetable market in the second district of this city; he thinks she was loading. He notified the mate when the lard was delivered at the vessel. The mate was present at the vessel all the time the lard was being delivered and signed the dray receipts for the vessel. He was not especially notified of the delivery otherwise than his being present and signed the dray receipts for the lard. It is the custom for goods to lay on the levee until they can be put on board. It is not so much a custom as a necessity. It is also customary to take lard on vessels as soon as delivered.

Sixth.—To the sixth cross-interrogatory he saith, he did not state, in his answers to the eighth interrogatory, who stored the lard. He does not know who stored the lard, and cannot tell in what part of the ship it was stored.

Seventh.—To the seventh cross-interrogatory he saith, he knows that lard will waste very much by being exposed to the hot sun, from having observed the fact.

his
PATRICK ⋈ MURPHY.
mark.

Examination taken, reduced to writing, and by the witness subscribed, by making his mark, (he being unable to write his name from the fact that he never learned to write,) and sworn to, this 24th day of April, 1855.

CHARLES B. SINGLETON, *Commissioner.*

And at my office aforesaid, on this, the 25th day of April, 1855, appeared before me, Jacob Mussina, a resident of this city, and by occupation a produce-broker, aged upwards of forty-six years, and being duly and publicly sworn, pursuant to the directions hereto annexed, and examined separately on the part of the defendants doth depose and say as follows:

First. To the first interrogatory, he saith: His name is Jacob Mussina, aged about forty-seven years, and by occupation a produce broker; his business is located in the City of New Orleans, Louisiana, where he works.

Second. To the second interrogatory, he saith: He knows only John O. Woodruff, whom he has known about eleven years; he has no recollection of making any shipment to the defendants of any lard in the month of July, 1854, on board the ship "Maid of Orleans."

Third. To the third interrogatory, he saith: He has no knowledge of having made any such freight engagement; he never made any such engagement.

Fourth. To the fourth interrogatory, he saith. he knoweth not.

Fifth. To the fifth interrogatory, he saith: He has been buying and shipping lard extensively during the last thirteen years, throughout the various seasons of the year. Lard exposed to the sun in the open air, during the month of July, in this city softens it, and often makes it necessary to recooper the packages, and if not re-coopered, it loses from five to fifteen per cent., and in some cases it loses a great deal more, depending a great deal on the character of the packages. Packages that will often contain lard with but very little loss when not exposed to the sun, will, when exposed to the sun in July of any year, lose very heavily. The sun in the month of July, in this city, has a very injurious effect both upon the packages and the lard, unless the lard is of a very superior quality; when thus exposed to the sun it becomes oil, and ceases to be lard.

Sixth. To the sixth interrogatory, he saith: He knoweth not.

Seventh. To the seventh interrogatory, he saith: He knoweth not.

Eighth. To the eighth interrogatory, he saith: He knoweth not.

Ninth. To the ninth interrogatory, he saith: That it is the custom in this city, during the warm season, to ship lard early in the morning and late in the evening of each day. That it is customary to take it immediately on board, that is, as soon as it is delivered to the vessel, *as soon as the same is delivered to the vessel.*

Tenth. To the tenth interrogatory, he saith: That the weather in this city during the month of July, 1854, was very hot.

Eleventh. To the eleventh interrogatory, he saith: He knows nothing more than he has already stated.

Cross Interrogatories.

First. To the first cross-interrogatory, he saith: He is not related to the defendants, or either of them, in any manner whatever, and was not at the time inquired of. He was not connected with the defendants, or either of them, in business, at the time inquired, neither has he been connected with them, or either of them, since.

Second. To the second cross-interrogatory, he saith: He did not make the freight engagement inquired of.

Third. To the third cross-interrogatory, he saith: He answered the fourth interrogatory, that he knoweth not.

Fourth. To the fourth cross-interrogatory, he saith: He answered to the sixth interrogatory, that he knoweth not.

Fifth. To the fifth cross-interrogatory, he saith: He knows the custom from thirteen years experience in buying and shipping lard to the various ports in America and Europe. No one informed him of the existence of the said custom, he always observed it himself, and he saw all those engaged in buying and shipping lard observing it. It is a custom founded on absolute necessity, in order to preserve that kind of property from great and serious loss. The custom has existed ever since he has been in the city; when he commenced business in this city, he found it in full force, and strictly observed. He has never known of an instance of lard being delivered on the levee before the ship reached the levee. He would consider such a course exceedingly imprudent. Lard may be taken on board while the ship is unloading, and placed between decks.

Sixth. To the sixth cross-interrogatory, he saith: The weather in July, in this city, is generally very warm, and in July, 1854, his family was absent from the city *travelling*, and his anxiety concerning them, caused him to notice the state of the weather more particularly than he would otherwise have done.

Seventh. To the seventh cross-interrogatory he saith: That he made only a negative answer to the last direct interrogatory, and that being the case he can make no answer to this interrogatory.

J. MUSSINA.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this, the 25th day of April 1855.

CHARLES B. SINGLETON,
Commissioner.

And at my office aforesaid on this the ninth day of May, 1855, appeared before me Charles Stanmeyer, a resident of this city and by occupation a cooper, aged upwards of twenty-four years, and being duly and publicly sworn pursuant to the directions hereto annexed, and examined separately on the part of the defendants, doth depose and say, as follows:

First. To the first interrogatory, he saith: His name is Charles Stanmeyer; aged upwards of twenty-four years; occcupation, a cooper, and he resides in the city of New Orleans, in the State of Louisiana.

Second, To the second interrogatory, he saith: He does not know any of the parties to this suit, personally.

Third. To the third interrogatory he saith; He does not know the ship "Maid of Orleans." He was employed to cooper some barrels and tierces of lard, which were shipped on said vessel, in the month of July, 1854. He knows the lard was shipped on said

vessel, by having seen the dray receipts for the same. He was employed by Kennett, Dix & Co., of this city in the month of July, 1854, as already stated. The packages when shipped were in good order and condition and the same required but little labor to put them in good order and condition. The packages were well coopered. The packages, from the way they felt in being coopered, were full, with the exception of two which had about fifty pounds out of each.

Fourth. To the fourth interrogatory, he saith: The weather, in the month of July, 1854, was uncommonly warm. The lard was hauled to the ship early in the morning and late in the evening of each day.

Fifth. To the fifth interrogatory, he saith: He was not employed to haul said lot of lard, or any other lot, in the month of July, 1854,

Sixth. To the sixth interrogatory, he saith: He did not haul the lard, but that he knows the same was hauled early in the morning and late in the evening of each day.

Seventh. To the seventh interrogatory, he saith: He does not know what was done with the lard when taken to the ship.

Eighth. To the eighth interrogatory, he saith; He knoweth not.

Ninth. To the ninth interrogatory, he saith: He knoweth nothing further that will benefit the defendants.

Cross-Interrogatories.

First. To the first cross-interrogatory, he saith; He was not in any manner related to the defendants in this suit, or either of them, at the time of the matters inquired of, or since.

Second. To the second cross-interrogatory, he saith: There were about eleven hundred barrels and tierces, perhaps there were more. He coopered them in the month of July, 1854, in the Montgomery warehouse where the same was protected entirely from the rays of the sun. The materials used for coopering was the ordinary cooper's adze, and the ordinary hickory poles were used for hoops when needed. He served an apprenticeship of five years at the cooper's business, and has, exclusive of said five years, been working at the business during seven years.

Third. To the third cross-interrogatory, he saith: His means of learning the state of the weather in July, 1854, consisted in the fact of his being at the time in this city and actually feeling the intensity of the heat. He recollected the time of the day the lard was hauled, because he saw it hauled, and has not forgotten the fact.

Fourth. To the fourth cross-interrogatory, he saith: He knows the condition of the barrels when put on the drays, to be taken to the vessel, because it was his duty to see that all the packages were in good order and condition. He has stated that he did not see the lard after it was hauled to the vessel. He has already

stated that he knows the time of the day the same was hauled to the vessel.

Fifth. To the fifth cross-interrogatory, he saith: He could not answer the seventh interrogatory, except to express his ignorance of the matters therein inquired of. He does not know where the Maid of Orleans was lying. He gave no notice to any person concerning the lard. He knows nothing as to the custom of goods remaining on the levee until the same can be put on board. Does not know whether these goods were put on the vessel with the usual dispatch. He never saw the lard after the same was hauled to the vessel.

Sixth.—To the sixth cross-interrogatory, he saith: To the eighth interrogatory, he answers: "He knoweth not."

Seventh.—To the seventh cross-interrogatory, he saith: His answer to the ninth interrogatory was, "he knoweth nothing further that will benefit the defendants."

CHARLES STANMEYER.

Examination taken, reduced to writing, by the witness, and subscribed and sworn to, this 9th day of May, 1855, before me,

CHARLES B. SINGLETON,
Commissioner.

Clerk's Office, Court of Common Pleas, for the City and County of New York.

I, Benjamin H. Jarvis, Clerk of said Court, do hereby certify that I have compared the preceding copies of answers to certain interrogatories with the originals thereof annexed, to a commission on file in my office, and that the same are correct transcripts therefrom, and of the whole of said originals.

In witness whereof I have hereunto set my hand, and seal of office, this 5th day of December, 1855.

[SEAL.]

B. H. JARVIS, *Clerk.*

(Endorsed.)—N. Y. Common Pleas.

Wm. Nelson, and others, against Jas. E. Woodruff, and others. Copy answers to Interrogatories annexed to a Commission.

Jno. O. Woodruff & Co.

No.—

New Orleans, July 12, 1854.

$6,615 $\frac{56}{100}$.

Seventy days after date, pay to the order of ourselves, sixty-six hundred and fifteen $\frac{56}{100}$ dollars, value received, and charge the same to account.

As advised.

To Messrs. James E. Woodruff & Co., New York.

E. JNO. O. WOODRUFF & CO.

(Endorsed.)—Charge Sales Lard, and cr. our acct.

JNO. O. WOODRUFF & CO.,

Credited Jno. O. Woodruff & Co., in acct., July 20, 1854.

1453

Jno. O. Woodruff & Co.

$21,510 $\frac{88}{100}$.

New Orleans, June 29, 1854.

Seventy days after date, please place to the debit of Shipment Lard, per ship Maid of Orleans, twenty-one thousand five hundred and ten $\frac{88}{100}$ dollars. Value received, from John O. Woodruff & Co.

KENNETT, DIX & CO.

To Messrs. James E. Woodruff & Co., New York.

E.

(Endorsed.)—Credited John O. Woodruff & Co., on acct. July 13, 185 4.

Shipped, in good order and condition, by Jno. O. Woodruff & Co., on board the ship called the "Maid of Orleans," whereof Dennis is master, now lying in the port of New Orleans, and bound for New York, that is to say:

W. 111. One hundred and eleven tierces lard.
196. One hundred and ninety-six barrels do.

Being marked and numbered as in the margin, and are to be delivered in the like good order and condition, at the port of New York (the dangers of the Navigation and fire only excepted, unto James E. Woodruff & Co., or to their assigns, he or they paying freight for the said lard one $\frac{15}{100}$ dollar per barrel, and one $\frac{53}{100}$ dollar per tierce, with 5 per cent. primage and average accustomed.

111 Ts.,.. $1 53, 196 Bbls., $1 15,

$169 83
225 40
$395 23
19 76
$414 99

In witness whereof, the Master of the said vessel hath affirmed to three Bills of Lading, all of this tenor and date, one of which being accomplished, the others to stand void.

New Orleans, July 11, 1854.

Bbls.	Tcs.	
6	16	Contents unknown.
45	20	
22	40	
22	30	
21	5	
22		
6	111	
5		
12		
18		
11		
6		
196		

KENNETT, DIX & CO.,

Commission and Forwarding Merchants,
New Orleans.

Engraving of a Ship in full sail.

South'n Ladie's Book Print.

Shipped, In good order and well conditioned by Kennett, Dix & Co., for account and risk of whom it may concern, on board the good ship called the Maid of Orleans, whereof E. P. Dennis is Master for the present voyage, now lying at the port of New Orleans, and bound for New York, the following articles:

Burrows & Pettiman.	293	Two hundred and ninety-three bbls. lard
M. & C.	319	Three hundred and nineteen bbls. do.
Green & Stone.		
Lemp.	205	Two hundred and five bbls. lard
H.	233	Two hundred and thirty-three bbls lard
	38	Thirty-eight tierces lard
P.	23	Twenty-three tierces lard
	7	Seven barrels lard
Green & Stone.		
D.	42	Forty-two barrels lard

Charges. dol. cts.
Freight,
Postage & B. Lad'g,
Drayage,
Storage and labor,
Forwarding chg's,

1000 Bbls. at $1 15, $1,263 85
61 Tcs. at 1 50, 91 50
1,355 35
67 77
$1,423 12

Being marked and numbered as in the margin, which are to be delivered without delay in the like good order at the port of New York, (the dangers of the seas and fire only excepted,) unto J. E. Woodruff & Co., or to their assigns, he or they paying freight for the said goods at the rate of one dollar and fifteen one-hundredths per barrel, and one dollar and fifty one-hundredths per tierce —— —— with five per cent. primage and average accustomed.

In witness whereof, the Master or Purser of said ship hath affirmed to —— Bills of Lading, all of this tenor and date, one of which being accomplished the others to stand void.

Dated in New Orleans, this 11th day of July, 1854. (Contents unknown.)

B & P Bbls.	M & C Bbls.	H	H Tcs.	Lemp Bbls.	D	P Bbls.	P Tcs.	Bbls.	Tcs.
70	5	25	18	80	19	7	8	40	18
20	3	30	10	10	10		15	10	10
55	65	5	—	30	13		—	50	8
35	10	20	28	20	—		23	15	15
20	5	42	10	13	42			10	10
40	15	10	—	5				80	—
5	5	20	38	47				10	61
10	15	40		—				40	
40	40	15		205				80	
—	15	40						60	
295	10	—						50	
	10	247						20	
	10							40	
	10							5	
	10							10	
	10							40	
	7							19	
	20							10	
	15							13	
	13							7	
	10							10	
	—							57	
	303							60	
								15	
								5	
								5	
								15	
								35	
								10	
								65	
								25	
								38	
								80	
								70	
								—	
								1099	

Bbls.	Tcs.
293	38
319	23
205	—
233	61
7	
42	
—	
1099	

(Duplicate.)

Return of Merchandise weighed for Messrs. J. E. Woodruff & Co.,

viz.:			Gross.	Tare.
Burrows & Prettyman.	185	Bbls lard	46399	
Green & Stone.	123	" "	26576	5712
M & C	214	" "	42842	
No mark.	51	" "	12298	
H	16	" "	3912	
P	8	" "	1991	
H	17	Tcs. "	5974	
P	7	" "	2317	
M & C	3	" "	664	

BURROWS & PRETTYMAN.

263	202	273	257	271	278	222	261	249	
272	261	265	268	256	262	250	243	262	
273	263	270	275	258	228	260	267	261	
249	269	276	247	264	253	248	245	244	
255	260	258	222	272	252	206	263	257	
259	252	243	239	280	263	272	237	262	
210	255	246	265	257	261	264	253	267	
267	225	272	263	271	284	265	266	237	
273	272	282	266	271	266	272	269	254	
261	246	274	256	2 3	256	246	244	265	
2582	2505	2659	2558	2665	2603	2505	2548	2558	
265	274	275	256	219	265	235	259	271	
275	276	230	254	274	253	274	207	264	
273	271	263	244	272	274	272	273	168	
262	200	280	264	257	272	267	276	169	
277	246	245	233	263	266	252	227	69	
255	248	278	257	274	256	261	245	198	193
262	259	256	237	254	249	256	270	190	180
261	245	265	244	273	213	251	264	173	125
243	274	247	245	265	266	265	253	188	55
275	267	267	245	260	261	265	259	193	175
2648	2560	2606	2479	2611	2575	2598	2533	1833	725

GREEN & STONE.

221.42	244.44	264.50	237.40	221.45	249.45	206.52
245.50	272.47	232.46	250.45	223.45	258.47	266.50
258.45	2?8.49	264.50	229.44	229.50	239.44	219.48
255.46	263.48	220.45	248.45	260.44	245.45	207.49
256.48	210.42	236.45	250.42	246.44	214.45	207.50
234.46	269.46	256.49	258.43	249.44	210.51	269.49
261.47	273.48	266.44	257.45	241.45	247.46	266.46
268.48	260.48	267.44	231.45	260.45	244.44	263.45
247.45	243.40	252.47	253.49	252.48	214.44	218.49
247.44	262.46	243.48	258.46	260.46	204.43	261.46
2492.461	2524.458	2500.469	2471.444	2436.456	2324.454	2382.484

216.45	219.51	130.47	136.43	144.46	
222.46	250.43	50.45	185.45	94.52	
258.41	260.47	136.52	186.42	81.47	
207.46	215.42	164.49	180.45	171.56	
241.44	243.43	194.43	54.43	189 52	
217.44	268.48	194.51	133.50	135.59	
220.48	205.48	183.43	96.51	197.45	
212.42	228.40	195.48	81.49	136.46	175.45
211.48	154.51	134.48	64.48	121.50	185.46
228.45	196.50	194.52	170.43	180.50	210.48
2232.450	2238.463	1574.478	1385.462	1448.494	570.139

M. & C.

235	255	245	237	256	264	208	256
238	246	223	264	237	246	260	238
251	248	211	234	221	261	226	265
264	257	235	264	262	246	253	234
250	244	206	265	260	209	257	224
234	260	208	256	214	245	239	273
236	249	256	234	201	241	226	222
246	231	275	255	230	207	249	218
247	203	232	244	225	256	255	241
237	215	263	262	265	251	268	270
2438	2414	2353	2515	2371	2426	2441	2441

235	266	251	237	251	265	117	199
263	264	275	236	237	273	116	168
245	205	252	232	232	83	125	175
265	252	268	228	245	192	139	184
254	206	215	248	263	173	108	180
278	200	223	260	234	171	104	187
205	266	267	245	246	193	156	142
273	262	230	270	244	178	117	113
252	241	239	263	265	169	165	97
222	246	246	230	222	175	185	175
2492	2408	2466	2449	2439	1872	1332	1620

						H.	
173	86	771	170	144			
136	73	135	158	112			
76	113	171	97	142		274	267
148	164	55	56	77		277	240
99	118	102	52	139		266	260
98	99	92	132	68		289	248
98	180	198	120	107	171	244	256
152	144	121	87	96	130	238	276
102	48	55	52	144	96	255	143
93	157	69	189	184	116	259	120
1175	1182	1169	1113	1213	513	16.3912	

NO MARK.

				246	
245	296	256	275	268	P.
276	249	256	270	275	
251	248	265	255	265	255
262	202	271	271	257	297
263	215	269	238	276	239
222	221	245	245	184	272
230	186	243	272	120	234
239	268	270	238	158	259
246	243	263	264	69	252
227	237	285	254	149	183
2461	2365	2623	2582	2267	1991

H.	Tierces.		P.	M. & C.
			370	
352	344		339	
349	350	350	370	
345	357	347	278	
351	347	359	240	261
347	350	360	350	294
352	361	353	370	119
	17.5974		7.2317	674

JOHN H. WOOD,
Weigher.

New York, 15*th Nov.*, 1854.

(Endorsed.)
A.
D. P. J. Exhibit (1).

Return of Merchandize weighed for Messrs. Jas. E. Woodruff & Co.

viz.:			Gross.	Tare.
Green & Stone,	82	bbls. Lard,	19,629	3,808
(H.)	20	" "	5,183	
M. & C.,	8	" "	1,850	
Burrows & Prettyman,	3	" "	758	
P.,	3	" "	931	
"	12	tierces "	4,338	
(H.),	21	" "	7,363	

GREEN & STONE.

219.49	261.42	243.48	216.49	236.48	255.46	270.48
267.76	183.40	237.42	231.51	237.46	241.43	278.43
234.47	250.45	225.41	232.46	197.50	209.42	263.45
239.48	246.44	205.51	228.49	237.43	256.46	258.47
217.51	266.45	248.45	260.52	232.44	190.49	225.51
213.48	204.55	259.48	253.45	217.48	255.48	239.49
256.46	271.50	214.46	248.42	242.47	220.48	263.47
259.48	250.44	235.45	253.46	212.43	242.45	265.47
229.48	247.44	240.43	246.41	235.47	263.41	220.44
266.48	247.48	260.46	250.46	264.47	220.46	222.53
2399.479	2425.457	2366.455	2417.467	2309.463	2351.454	2473.474

H. bbls.		M. & C. bbls.	Burrows & Prettyman.	P.
263.47	270 259			
245.46	259 263			
223.48	289 272	179		
266.48	194 247	250		
240.46	268 258	181		
246.47	257 265	245		
250.45	244 245	260		
206.48	254 264	214	252	308
259.48	209.50 265 269	269	254	331
253.42	229.44 265 276	252	252	292
2451.465	438.94 20.5183	8.1850	3.758	3.931

P. tierces.		N. tierces.		
378	354	353	361	354
358	375	356	351	334
375	373	353	327	361
371	380	352	352	351
326	334	347	358	351
373	341	323	351	311
12.4338		346	353	368
		21.7363		

JOHN H. WOOD.
Weigher.

New York, 4th Nov., 1854.
B.,
D. P. J.

(Duplicate.)

Returns of Mdze., weighed for Messrs. James E. Woodruff & Co.

Burrows & Prettyman,	85 Bbls	Lard	21832 lbs.	
Green & Stone,	37 "	"	8999 "	1680.
M. & C.	28 "	"	6715 "	

BURROWS & PRETTYMAN.

261	257	226	243	260	266	248	264	
243	261	274	238	242	263	234	240	
246	266	248	277	251	351	258	262	
252	274	268	265	245	254	268	249	
281	242	272	263	264	226	236	276	
271	269	262	243	248	232	248	281	243
243	243	268	257	256	272	267	212	277
278	220	269	265	219	266	277	260	253
265	259	287	244	271	260	255	244	274
263	244	274	278	243	274	255	229	270
2613	2555	2648	2573	2499	2564	2546	2517	1317

GREEN & STONE.

228.49	21.648	235.46	
257.48	256.44	235.45	
259.40	290.46	242.44	
202.46	211.48	230.42	238.47
262.51	260.43	261.44	256.44
253 40	254.44	252.45	240.45
240.42	217.42	260.45	243.51
259.48	220.41	233.50	239.42
208.45	260.45	200.51	263.45
248.44	264.48	265.47	263.45
2416.453	2428.449	2413.459	1742.319

M. & C.

246	222	
237	248	
215	247	246
227	233	207
225	266	208
262	239	228
223	247	260
259	215	246
250	207	269
260	262	261
	28,6715	

JOHN H. WOOD, *Weigher.*

New York, 15*th November*, 1854.

C. D. P. J.

(Duplicate.)

Return of Mdze, weighed for Messrs. James E. Woodruff & Co. viz.

H. 200 Bbls. Lard, 51575 lbs.

256	263	286	262	253	250	265	256
257	220	234	234	256	270	235	270
261	266	249	277	263	240	274	224
277	256	251	254	278	259	269	266
253	264	279	255	268	257	266	249
269	261	269	258	203	245	265	276
252	264	262	250	264	242	256	255
255	257	269	262	282	272	262	262
272	252	244	251	260	283	271	260
256	271	248	267	250	249	205	267
2608	2574	2591	2570	2577	2567	2568	2588
221	273	266	256	183	276	268	275
249	271	227	223	268	268	264	253
265	254	261	278	242	269	260	265
257	263	260	274	253	276	267	257
264	275	275	248	274	284	255	264
265	253	244	258	268	243	237	256
236	261	268	258	258	252	253	261
259	224	270	277	257	274	287	275
267	265	260	269	262	264	238	251
270	235	264	263	218	278	283	268
2353	2574	2595	2604	2482	2666	2550	2625
254	263	259	260	251	206	255	244
270	281	267	270	267	234	241	263
246	264	263	270	263	275	268	271
234	270	260	270	256	234	270	271
258	257	263	262	216	276	218	263
2597		2644		2478		2564	

JOHN H. WOOD, *Weigher.*

New York, 25*th October*, 1854.

D. D. P. J.

1661

(Duplicate.)

Return of Mdze. weighed for Messrs. Jas. E. Woodruff & Co., viz:

M. & C.,	31	bbls. Lard,	9,839 lbs.
Burrows & Prettyman,	1	" "	277 "

M. & C.			Burrows & Prettyman.
265	207	251	
246	255	234	251
256	229	274	265
254	252	229	251
224	266	269	210
257	240	262	262
267	257	300	252
266	262	262	266
	31.7839		1.277

JOHN H. WOOD,
Weigher.

New York, 4th Nov., 1854.

(Endorsed.)
E.
D. P. J.

Return of lard weighed for acct. of Messrs. Jas. E. Woodruff & Co.

(W) 192 lbs.

259	261	258	249	268	263	252	250	275	266	260
262	255	241	276	258	268	264	246	250	248	257
260	274	240	260	240	267	227	273	223	245	256
244	254	251	267	238	272	272	250	218	273	259
239	268	248	241	275	258	248	244	252	250	271
265	244	236	259	258	270	233	235	250	276	248
274	279	236	258	263	267	263	265	237	267	255
271	273	272	252	251	262	232	258	268	251	224
230	274	277	257	280	265	217	256	204	232	256
267	238	257	298	249	277	240	235	266	258	257
2571	2620	2516	2653	2580	2669	2448	2512	2443	2566	2543

263	245	263	265	261	266	238	274	
219	237	240	260	268	228	270	228	
239	241	260	257	270	260	244	262	
267	250	251	284	248	290	202	248	
250	263	238	263	268	224	242	242	
208	233	231	250	244	2:0	255	273	
260	250	264	230	262	270	260	245	
270	253	270	265	240	238	257	262	
264	267	268	254	276	230	256	220	270
248	287	257	259	258	260	236	258	234
2478	2526	2542	2587	2595	2486	2460	2512	504

Recapitulation.

10 Bbls.	2571	10 Bbls.	2543	100 Bbls.	25518
10 "	2620	10 "	2478		
10 "	2516	10 "	2526		
10 "	2593	10 "	2542		
10 "	2580	10 "	2587		
10 "	2669	10 "	2595		
10 "	2448	10 "	2486		
10 "	2512	10 "	2460		
10 "	2443	10 "	2512		
10 "	2566	10 "	1504	92 "	23233
100 "	25518	92 "	23233	192 "	48751 lbs.

(W) 105 tierces.

345	285	334	345	328	320	328	356	343	314	356
267	346	343	328	366	346	340	347	296	293	366
341	378	333	324	357	315	322	318	307	290	358
351	317	366	326	335	332	347	335	360	300	320
345	340	337	318	305	321	338	348	343	355	354
347	310	333	331	320	318	326	324	354	313	
329	289	277	333	295	335	315	328	324	320	
370	320	353	332	323	298	313	353	295	321	
343	328	332	340	338	325	300	350	350	340	
368	340	353	348	360	288	350	310	355	355	
3406	3223	3361	3835	3327	3198	3279	3369	3327	3201	3724

Recapitulation.

10	Tierces,	3,406
10	"	3,223
10	"	3,361
10	"	3,335
10	"	3,327
10	"	3,193
10	"	3,279
10	"	3,369
10	"	3,327
10	"	3,201
5	"	1,724
105		34,750 lbs.

New York, August 23d, 1854.

E. A. DEBBLE, *Weigher.*

(Endorsed.)
F. D. P. G., Exhibit (II.)
Weigher's Return.
(W) 192 barrels of lard.
(W) 105 tierces of lard.
New York, August 23d, 1854.

1463

Invoice weight, .	320,913	57,555	263,358	
Returns, . . .	281,198	62,966	218,232	
			45,126	
				45,126
Invoice W. . .	89,985	16,611	72,374	
	83,501	15,030	68,471	
			4,903	
				4,903
				lbs. 50,029

10 empty packages.

Mr. Dubois will oblige me, letting me know how many packages about delivered from the ship Maid of Orleans and put in store by him, were empty or part empty; saw how many tierces and barrels; if Messrs. Titus & Burdett have put aside the alleged packages; please get an account from them about what proportion is out.

J. O. WOODRUFF.

	¼ out III, III, III, III, III, III, III, III, II,	26
	½ out III, III, III, III, III, III, III, II, .	23
	¾ out III, III, III, III, III, III, . . .	18
	½ out III, III, III, III, I, ...	13
	¾ out III, III, III, I, ...	10
M. & Co.,	¼ out III, II, -	5
	All out III, III, III, II, ...	11

Marks.	1/10	1-5	¼	½
H. G.	1266	190	181	140
H. H.	502		190	
H. I.	2032			
G. Q.	200			
G. R.	100			
G. S.	1595			91
G. T.	390			
G. V.	728			
G. V.	1525			
G. X.	360			
H. A.	667			
H. B.	810		32	
H. C.	202			
H. D.	260			
H. E.	140			
C. B.	21			69
S. S. & C.	155	125		
H. F.	2 65			

Marks.	1/10	1-3	1/4	1/8
C. A. H.	320	135		26
	4			
S. S. C.	2805	85	140	
[S. S.]	970			21
A. S. C.	600		68	
W. T.			340	
A. B. & C.	200			
B. P. C.	50		18	
K.	350			20
W. E. B.	48		100	10
R. S. L. & B.			349	
[J. S.]	2986			30
K. & C. & K. C.	450		260	
[S.]	387			72
R. E. K.	450		32	
M. P.	186		50	
F.	901		68	
F.			248	
H. F. 1/10 3				
C. S. 2.				
No. 1.				
(J. S.) 2.				
No mark, 13.				
C. A. H. 4.				
S. S. & C. 2.				
[J. S.] 1.				

W. PARTRIDGE.

Staten Island, Aug. 24, 1857.

	1/8	1-3	1/4	1/10	Over.	Short.
H. G.	140	230	181	1240		
H. H.			190	510		8
H. I.				2030	7	
G. Q.				200		
G. R.				100		
G. S.				1595		
G. T.	91			390		
G. V.				738		
C. V.				1525		
G. X.				360		
H. A.				667		
H. B.				790	20	
H. C.			32	220		20
H. D.				260		
H. F.				140		

No mark. 17.
W. R. B. (No. 2.) No. 2.

THOS. L. BOSS.

Feb'y 19, 1858.

No. 28.

In pursuance of an Act of the Congress of the United States of America, entitled "An Act concerning the Registering or Recording of Ships or Vessels."

William Nelson of the City, County and State of New York, having taken or subscribed the oath required by the said Act, and having sworn that he, the said William Nelson, Edward S. Dennis of said place, John Bunker, of Brooklyn; Sherburn Sears, of Milton, Ulster Co., State of New York, and Aaron Cohen, of New Orleans, State of Louisiana, are the only owners of the ship or vessel called the Maid of Orleans, of New York, whereof Edward S. Dennis is at present master, and a citizen of the United States; and, that the said ship or vessel was built at the city aforesaid, in the State of New York, during the past and present year 1847 and 1848, as per certificate of Messrs Brown & Bell, master builders, under whose direction she was built, and E. F. Purdy, Surveyor of this Port, having certified that the said ship or vessel has two decks and three masts, and, that her length is one hundred and fifty-eight feet seven inches; her breadth, thirty-six feet; her depth, twenty-one feet six inches; and, that she measures nine hundred and thirty-four $\frac{45}{95}$ tons, that she is a ship; has a square stern; no galleys; and a woman figure head; and the said William Nelson having agreed to the description and admeasurement above specified, and sufficient security having been given according to the said Act, the said ship has been duly registered at the Port of New York.

Given under our hands and seals at the Port of New York, this 20th day of January in the year one thousand eight hundred and forty-eight.

District and Port of New York, }
Collector's Office. }

I hereby certify that the within is a true copy of the original on record in this office.

[Collector's Office, District of New York.]
Given under my hand and seal, 9th March, 1858.

[SEAL.] W. J. J. WHITE,
Dept'y Collector.

(Endorsed.) J. Woodruff & Co., 40 Broad St.
Fees $1.50.

Exhibit (3.)

District Court of the United States, }
For the Southern District of New York. }

William Nelson and others, }
vs. } *Notice.*
John O. Woodruff, et al. }

Please to take notice, that Captain Edward P. Dennis, will be

examined (*de bene esse*) on the part of the libellants and plaintiffs in the above entitled cause, before me, (a Commissioner duly appointed by the Circuit Court of the United States for the Southern District of New York, under and by virtue of the Acts of Congress in such case made and provided,) at my office, United States Court Buildings, 41 Chambers street, in the City of New York, on the 14th day of January inst., at 11 o'clock, in the forenoon of that day, at which time and place you are hereby notified to be present, and put interrogatories, if you shall think fit.

Dated, New York, the 12th day of January, A. D. 1858.

Yours, &c.,

GEO. F. BETTS,

United States Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

State of New York } *ss.*
City and County of New York. }

Joseph Madden, of said City, being duly sworn says, that on the 12th day of January, inst., he served a copy and duplicate of the within notice on Beebe, Dean and Donohue, the defendants' attorneys, by delivering such duplicate and copy to Mr. Donohue, one of said attorneys, personally, and leaving the same with him.

JOSEPH MADDEN.

Sworn before me this 14th day of January, 1858.

[SEAL.] F. C. BOWMAN,
Notary Public.

(Endorsed.)

U. S. District Court, William Nelson and others, against John O. Woodruff and others. No. of Examinations of Captain Dennis, (*de bene esse,*) 1858, January 14. Mr. Donohue appearing for claimants. Adjourned till 2 P. M.

G. F. BETTS,
U. S. Commissioner.

UNITED STATES OF AMERICA:

Southern District of New York, } *ss.*
City, County, and State of New York, }

Be it remembered, That on this fourteenth day of January, in the year of our Lord one thousand eight hundred and fifty-eight, I, George F. Betts, a Commissioner, duly appointed by the Circuit Court of the United States, for the Southern District of New York, in the Second Circuit, under and by virtue of the Acts of Congress, entitled "An Act for the more convenient taking of affidavits and bail in civil causes, depending in the Courts of the United States," passed February 20th, 1812, and the Act of Con-

gress entitled "An Act in addition to an Act entitled 'An Act for the more convenient taking of affidavits and bail in civil causes, depending in Courts of the United States,'" passed March 1st, 1817, and the Act entitled "An Act to establish the Judicial Courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at the U. S. Courts in the city of New York, in the said Southern District of New York, in the State aforesaid, Edward P. Dennis, to testify and the truth to say, on the part and behalf of the libellants, in a certain suit or matter of controversy, now depending and undetermined, in the District Court of the United States for the Southern District of New York, at the city of New York, in the District aforesaid, wherein William Nelson, Edward S. Dennis, Francis Bartlett, Sherburn Sears, and Aaron Cohen, are libellants, against John O. Woodruff and Robert M. Henning, surviving copartners of James E. Woodruff, deceased, &c. And the said Edward P. Dennis, being about the age of twenty-nine years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Edward P. Dennis, and he did thereupon depose, testify, and say as follows, viz.:

I am a sea-faring man, and captain of the ship "Maid of Orleans." I am going to sail on Monday next for New Orleans. I reside in Brooklyn. I was captain of the "Maid of Orleans" on her voyage in July, 1854, from New Orleans to New York. We left New Orleans in July; we arrived here in August. We had some lard on that passage—Messrs. Woodruff & Co. were the consignees of the lard. The weather was very warm when we left New Orleans, very hot. I saw some of the lard brought down to the vessel; there was no covering on the dray over the packages. It was put on board the ship immediately when received; it was stowed in the after-hold, in some places in four tiers, in some places in five tiers. When it came on board, the barrels were in good order, they were greasy on the outside and the lard would drip out between the staves as we rolled the barrels over—it appeared to be in a liquid state. It was taken aboard carefully, and particular attention was paid to stowing it. In my opinion the after part of the ship was by all means the best part in which to stow the lard. I saw that the lard came from up in the city. I think it did not come from any of the steamboats about. We have to keep the hatches on all the voyage; it was very hot in the hold.

E. P. DENNIS.

Subscribed and sworn to this 14th day of January, 1858, before me.

GEO. F. BETTS, *U. S. Commissioner.*

United States of America, }
Southern District of New York. } *ss.*

I, George F. Betts, a Commissioner duly appointed by the Circuit Court of the United States, for the Southern District of New York in the Second Circuit, under and by virtue of the Acts of Congress, entitled "An Act for the more convenient taking of affidavits and bail in civil causes, depending in the Courts of the United States," passed February 20th, 1812, and the Act of Congress, entitled "An Act, in addition to an Act, entitled 'An Act for the more convenient taking of affidavits and bail in civil causes, depending in the Courts of the United States,'" passed March 1st, 1817, and the Act entitled "An Act to establish the Judicial Courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, the witness is material and necessary in the cause in the caption of the said deposition named, and that he is about to proceed to sea more than one hundred miles distant from the District in which said cause is to be tried. I further certify that due notification of the time and place of taking the said deposition signed by me, was made out and served on the proctors for the claimants, to be present at the taking of the said deposition, and to put interrogatories, if he or they might think fit, and that Charles Donohue, Esq., one of the proctors for the claimants, appeared at the hour named in said notification, when the taking of said deposition was adjourned until two o'clock in the afternoon of the same day. I further certify that on the said 14th day of January, at two o'clock P. M., in the year of our Lord one thousand eight hundred and fifty-eight, I was attended by the proctor for the libellants (the proctors for the claimants not appearing at that time), and by the witness, who of sound mind and lawful age, and the witness was by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth and nothing but the truth, and the deposition was by me reduced to writing in the presence of the witness, and from his statement; and after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of filing the same in the Court for which the same was taken. And I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof, I have hereunto set my hand and seal, this 14th day of January, in the year of our Lord one thousand eight hundred and fifty-eight, and of the Independence of the United States, the eighty-second.

[SEAL.]

GEO. F. BETTS,

United States Commissioner, duly appointed by the Circuit Court of the United States, for the Southern District of New York, in the Second Circuit.

1469

(Endorsed.)—Vol. 14, page 19. United States District Court, for the Southern District of New York.

William Nelson and others,
vs.
John O. Woodruff, *et als.*

Deposition on the part of the libellants, taken before George F. Betts, United States Commissioner, on the 14th day of January, 1858.

Filed the 14th day of January, 1858.

At a Stated Term of the District Court of the United States of America, for the Southern District of New York, held at the City Hall, in the city of New York, on Wednesday, the 28th day of April, in the year of our Lord one thousand eight hundred and fifty-eight.

Present—The Honorable Samuel R. Betts, District Judge:

William Nelson, *et als.*,
vs.
John O. Woodruff, survivor, &c. } 14, 19.

This case having been heard on the pleading and proofs, and argued by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged and decreed, by the Court, that the libellants recover in this action against the respondents, the amount of freight and primage in the pleadings referred to, which still remains unpaid. And that it be referred to one of the Commissioners of this Court, to ascertain such amount, and to report to this Court with all convenient speed.

SAMUEL R. BETTS.

(Endorsed.)—Vol. 14, page 19. United States District Court, for the Southern District of New York.

William Nelson, *et als.*
vs.
John O. Woodruff, survivor, &c.
Goodman & Jesup, Proctors for Libellants,
Beebe, Dean & Donohue, for Respondents.

Decree for libellants for freight and primage, with reference to Commissioner, to compute account, &c.

Filed the 28th day of April, 1858.

U. S. District Court.

William Nelson, *et als.*,
vs.
John O. Woodruff, *et al.* } Affidavit of service.

City and County of New York, *ss.:*

JOSEPH MADDEN, of the City of Brooklyn, being duly *sworn* doth depose and say, that he did, on the sixth day of May, in the year one thousand eight hundred and fifty-eight, serve Beebe,

Dean & Donohue, the defendants' proctors in the above entitled action, with a notice of reference, of which the annexed is a copy, by delivering the same to a clerk in their office, (they being absent therefrom) and leaving the same with him.

JOSEPH MADDEN.

Sworn to before me, this 8th day of May, 1858.

[SEAL.] F. C. BOWMAN,
Notary Public.

District Court of the United States,
For the Southern District of New York.

William Nelson, *et als.*,
vs.
John O. Woodruff, survivor, &c.

Notice of Reference.

In conformity with the order entered in the above entitled cause, you will please to take notice, that the reference ordered therein, will be proceeded with, before me, (a Commissioner duly appointed by the Circuit Court of the United States for the Southern District of New York, under and by virtue of the Acts of Congress in such case made and provided,) at my office at the United States Courts, at No. 9 College Place, in the City of New York, on the 8th day of May, inst., at 11 o'clock in the forenoon of that day, at which time and place you are hereby notified to attend with the testimony you may have to offer in the matter referred.

Dated, New York, the 6th day of May, A. D. 1858.

Yours, etc.,
GEO. F. BETTS,
United States Commissioner, duly appointed by the Circuit Court of the United States, for the Southern District of New York in the Second Circuit.

(Endorsed.)
14–19. U. S. District Court.
William Nelson, *et als.*
vs.
John O. Woodruff, survivor, &c.
No. of Reference.

GOODMAN & JESUP,
Proctors, &c.

U. S. District Court.
William Nelson, *et als.*,
vs.
John O. Woodruff, *et al.*
Reference on decree.
Mr. GOODMAN for libellants.

Proof of service of notice.

FRANCIS C. BOWMAN, (*sworn*).—I have calculated interest on the amount of freight and primage referred to in the pleadings, from August 4, 1854.

Amount of freight and primage,	$1,838 11
Interest,	480 32
Total,	$2,318 43

F. C. BOWMAN.

(Endorsed.)

14-19, U. S. District Court.

William Nelson, *et als.*,
vs.
John O. Woodruff, *et al.*

Min. on Ref.

Filed May 8, 1858.

At a stated term of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, held at the City Hall, in the City of New York, on Tuesday the eleventh day of May, in the year of our Lord one thousand eight hundred and fifty-eight.

Present: The Honorable CHARLES A. INGERSOLL, District Judge.

William Nelson, *and others*,
vs.
John O. Woodruff, Survivor, &c. } Vol. 14, p. 19.

George F. Betts, U. S. Commissioner, brings into Court the report made by him in the above entitled cause.

On motion of Messrs. Goodman and Jesup, proctors for the libellants. It is ordered that the same be confirmed, unless exceptions are filed thereto, within two days from this date.

(Endorsed.)

Vol. 14, 19.

U. S. District Court, Southern District of New York.

William Nelson, *et als.*,
vs.
John Woodruff, Survivor, &c.

GOODMAN & JESUP,
Proctors for Libellants.

Order confirmed Commissioner's report.

Nisi.

Filed 11th May, 1858.

District Court of the United States,
For the Southern District of New York.

William Nelson, *et als.*
vs.
John O. Woodruff, *et al.*, survivors, &c. } *Commissioner's Report.*

In pursuance of a decretal order made in the above entitled cause, on the 28th day of April, in the year of our Lord one thousand eight hundred and fifty-eight, by which among other things, it was referred to the undersigned one of the Commissioners of this Court, to ascertain and compute the amount due the libellant for freight and primage, in the pleadings mentioned, and to report thereon to this court with all convenient speed.

I, George F. Betts, the Commissioner, to whom the matter was referred, do report, that I have been attended by the proctor for the libellant, and have taken and examined the testimony offered to support the libellant's claim, and do find that there is due to the libellant for the freight and primage in the pleadings mentioned, the sum of - - - - - - - $1,838 11
Interest from August 14, 1854. - - - 480 32

Making in the total - - - - - - - $2,318 43

The sum of two thousand three hundred and eighteen dollars and forty-three cents, dated the 11th day of May, A. D. 1858, all which is respectfully submitted.

GEO. BETTS,
U. S. Commissioner.

GOODMAN & JESUP,
Proctors for Libellants.

(Endorsed.)

Vol. 14, page 19.

United States District Court, for the Southern District of New York.

William Nelson, *et al.*,
vs.
John O. Woodruff, *et al.*

GOODMAN & JESUP, *Proctors for Libellants.*

Commissioner's Report filed the 11th day of May, 1858.

At a Stated Term of the District Court of the United States of America, for the Southern District of New York, held at the City Hall in the City of New York, on Thursday the 13th day of May, in the year of our Lord one thousand eight hundred and fifty-eight.

Present: The Honorable SAMUEL BETTS, District Judge.

William Nelson, *et als.*,
vs.
John O. Woodruff, *et al.*

The time to file exceptions to the Commissioner's report in this cause, having expired, and no exceptions having been filed. On reading and filing report of George F. Betts, United States Commissioner, to whom the above matter was referred, by which there is reported due the libellants for freight and primage, with interest, the sum of two thousand three hundred and eighteen dollars and forty-three cents.

On motion of Goodman & Jesup, proctors for the libellants, it is ordered, that the report be in all things confirmed, and that the libellants recover in this action against the respondent, the amount reported due, together with their costs, to be taxed.

(Signed.) SAMUEL R. BETTS.

(Endorsed.)

Vol. 14, page 19.

United States District Court, for the Southern District of New York.

William Nelson, *et als.*,
vs.
John O. Woodruff, *et al.*

GOODMAN & JESUP, *Proctors for Libellants.*

Final decree on confirmation of Commissioner's Report.

Filed and entered the 13th day of May, 1858.

U. S. District Court:

John O. Woodruff and another,
ads.
William Nelson and others.

SIR.—You will please to take notice that the above named respondents appeal to the Circuit Court of the United States for

the Southern District of New York, in the Second Circuit, from the final decree entered in this cause.

Dated May 10, 1858.

Yours, &c.,

BEEBE, DEAN & DONOHUE,
Proctors for Respondents.

To GEO. F. BETTS, Esq., *Clerk.*

(Endorsed.)

14, 19, U. S. District Court.

John O. Woodruff, et al.,
vs.
William Nelson, et als.

Notice of appeal.

BEEBE, DEAN & DONOHUE, *Proctors.*

Filed, May 18th, 1858.

Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit.

William Nelson and others, libellants and appellees,
vs.
John O. Woodruff and another, respondents and appellants.
Bond for costs.

Know all men by these presents, that we, John O. Woodruff, Marcus P. Woodruff and James Hewitt, all of the city of New York, are held and firmly bound unto the above named libellants and appellees in the sum of forty-eight hundred dollars, to be paid to the said libellants, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally firmly by these presents. Sealed with our seals and dated the twenty-eighth day of May, in the year of our Lord one thousand eight hundred and fifty-eight.

Whereas the above named respondents have prosecuted an appeal to the Circuit Court of the United States, for the Southern District of New York, in the Second Circuit, to reverse the decree rendered in the above entitled suit, by the Judge of the District Court of the United States, for the Southern District of New York:

Now, therefore, the condition of this obligation is such, that if the above named appellants shall prosecute their appeal to effect and answer all damages and costs, if they fail to make their appeal

good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

JOHN O. WOODRUFF, [SEAL.]
MARCUS P. WOODRUFF, [SEAL.]
JAMES HEWITT. [SEAL.]

Sealed and delivered, and taken and acknowledged, this 28th day of May, 1858, before me.

GEO. W. MORTON, *U. S. Com'r.*

United States of America, Southern District of New York. } *ss.*

Marcus P. Woodruff and James Hewitt being duly sworn, each depose and say, that he resides in the city of New York, and that he is worth the sum of forty-eight hundred dollars, over and above all his just debts and liabilities.

MARCUS P. WOODRUFF,
JAMES HEWITT.

Sworn to, this 28th day of May, A. D. 1858, before me.

GEO. W. MORTON, *U. S. Com'r.*

The sufficiency of the sureties to the within bond approved.

SAML. R. BETTS, *District Judge.*

New York, May 28, 1858.

(Endorsed.)

Vol. XIV., page 19.

U. S. Circuit Court.

William Nelson and other, libellants and appellees, *v.* John O. Woodruff and other, respondents and appellants. } Bond for costs on appeal.

BEEBE, DEAN & DONOHUE, *Appellants' Proctors.*

Filed, this 28th day of May, 1858.

Circuit Court of the United States, for the Southern District of New York, in the Second Circuit.

John O. Woodruff and other, respondents and appellants. *ads.* William Nelson and others, libellants and appellees.

To the Honorable, the Circuit Court of the United States, for the Southern District of New York, in the Second District:

The petition of John O. Woodruff and others, respondents and appellants, respectfully showeth, that heretofore, and on or about

the 26th day of November, 1856, the above named libellants exhibited their libel in the District Court of the United States for the Southern District of New York, against your petitioners, praying, for the reasons therein mentioned, that the said Court would be pleased to pronounce for the claim of the libellants, therein mentioned, with costs. That process was thereupon issued and the respondents duly appeared and answered; that thereafter and on or about the 28th day of April, 1858, a final decree was made in the said cause in favor of the libellants for their claim, with costs; whereas these respondents allege that by law they were entitled to a decree that such libel be dismissed with costs; for which, and other reasons, these respondents appeal to the Circuit Court to be held in said district, and they intend to have such appeal heard anew on the pleadings and proofs in said District Court, and on new pleadings and proofs, to be introduced in such Circuit Court; and the respondents pray that the record and proceedings may be reversed, or such other decree made therein as may be just.

BEEBE, DEAN & DONOHUE,
Proctors for Appellants.

(Endorsed.)
14, 19. U. S. Circuit Court.

John O. Woodruff and other, *ads.*
William Nelson and others.
} Petition for appeal,

BEEBE, BEAN & DONOHUE, *Proctors.*

Filed, August 16, 1858.

At a special term of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, held at the City Hall, in the city of New York, on Thursday, the twenty-second day of September, in the year of our Lord one thousand eight hundred and fifty-nine.

Present—The Honorable SAMUEL NELSON, an Associate Justice of the Supreme Court of the United States.

William Nelson, *et als.*
Libellants and Appellees,
vs.
John O. Woodruff, *et al.*
Respondents and Appellants.

The appeal in this case coming on to be heard,

Mr. Goodman reads from the Apostles the evidence on the part of the libellants and appellees.

Mr. Beebe reads from the Apostles the evidence on the part of respondents and appellants.
Mr. Beebe argues on the part of respondents and appellants.
Mr. Goodman " " " libellants and appellees.
Mr. Houghton argues on the same side.
Mr. Beebe is heard in reply.
Cur adv. vult.

At a special term of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, held at the City Hall, in the City of New York, on Thursday, the thirteenth day of October, in the year of our Lord one thousand eight hundred and fifty-nine.

Present—The Honorable SAMUEL NELSON, an Associate Justice of the Supreme Court of the United States.

William Nelson, Edward S. Dennis, Francis Bartlett, Sherburne Sears, and Aaron Cohen, owners of the ship Maid of Orleans, &c.
Libellants and Appellees,
vs.
John O. Woodruff and Robert N. Henning, surviving co-partners of James E. Woodruff, deceased,
Respondents and Appellants.

This cause having been brought to a hearing upon an appeal to this Court from a final decree of the District Court of the United States for the Southern District of New York, and the said cause having been duly heard upon the Apostles therein and argued by Mr. Goodman, advocate for libellants and appellees, and W. R. Beebe, Esq., advocate for respondents and appellants, and due deliberation having been had in the premises, It is ordered, adjudged, and decreed by the said Court now here, that the said decree of the said District Court heretofore made in this cause, be and the same is hereby in all things affirmed with costs to the said appellees, which said decree with the costs in the said District Court duly taxed and the interest thereon, to the date of this decree with the said costs of this Court, the same having been duly taxed at the sum of one hundred and twenty-seven dollars and fifty cents, amount in the whole to the sum of twenty-eight hundred and forty-seven dollars and nine cents.

To the Honorable the Supreme, Court of the United States of America.

The Petition of Appeal of John O. Woodruff and Robert Henning, survivors of James E. Woodruff, deceased—

Respectfully showeth:

That heretofore, and on or about the eighth day of December, 1856, William Nelson, Edward S. Dennis, Francis Bartlett, Sherburne Sears, and Aaron Cohen, filed their libel in the District Court of the United States, for the Southern District of New York, against the petitioners, claiming freight.

That thereafter an answer was duly filed, taking issue on such libel, and the cause was duly heard in said District Court, by a decree thereof, on the thirteenth day of May, 1858. The said Court adjudged and decreed that the libellants should recover against the petitioners, the said freight, to the amount of two thousand three hundred and eighteen dollars and forty-three hundredths of a dollar, besides costs. That the petitioners duly prosecuted their appeal from the said decree to the Circuit Court of the United States for the Southern District of New York, in the Second Circuit and the same was duly heard in said Court, and that thereafter, the said Circuit Court did order, adjudge, and decree, that said decree of the District Court should be in all things affirmed with costs.

That your petitioner respectfully insists that the said decree is erroneous, and he appeals from the said decree, and each and every part thereof, and prays that the Supreme Court of the United States may proceed to hear the said cause anew, on new allegation and proofs, and to reverse and annul said decree of the said Circuit Court, and to restore to the appellants all rights which he has lost by reason of said decree.

BEEBE, DEAN & DONOHUE,
For Appellant.

JOHN O. WOODRUFF, *Appellants.*

Filed, October 25, 1859.

Circuit Court of the United States of America,
For the Southern District of New York, in the Second Circuit.

John O. Woodruff and Robert M. Henning, Survivors of James E. Woodruff, dec'd. Respondents and Appellants,

vs.

William Nelson, Edward S. Dennis, Francis Bartlett, Sherburne Sears and Aaron Cohen, Libellants and Appellees.

} Bond for Costs.

Know all men by these presents, that we, Robert M. Henning and Marcus Woodruff, are held and firmly bound unto the above named William Nelson, Edward S. Dennis, Francis Bartlett, Sherburne Sears and Aaron Cohen, in the sum of six thousand dollars, to be paid to the said William Nelson and others, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally firmly by these presents. Sealed with our seals, and dated the seventeenth day of October, in the year of our Lord one thousand eight hundred and fifty-nine.

Whereas, the above named John O. Woodruff, *et al.*, have prosecuted their appeal to the Supreme Court of the United States, to reverse the decree rendered in the above entitled suit, by the Judge of the Circuit Court of the United States, for the Southern District of New York.

Now therefore, the condition of this obligation is such, that if the above named John O. Woodruff, *et al.*, shall prosecute their appeal to effect and answer all damages and costs, if they fail to make their appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

R. M. HENNING, [SEAL.]
MARCUS P. WOODRUFF, [SEAL.]

Sealed and delivered, and taken and acknowledged, this 22d day of October, 1859, before me.

[SEAL.] O. R. STEELE,
Notary Public.

United States of America, } *ss.*
Southern District of New York, }

Robert M. Henning and Marcus P. Woodruff, each for himself, being duly sworn, doth depose and say, that he resides in the

Southern District of New York, and that he is worth the sum of twelve thousand dollars over and above all his just debts and liabilities.

R. M. HENNING,
MARCUS P. WOODRUFF.

Sworn to, this 22d day of October,
A. D. 1859, before me.
[SEAL.] O. R. STEELE,
Notary Public.

(Endorsed.)
United States Circuit Court.

John O. Woodruff, *et al.*, Respondents and Appellants,
vs.
William Nelson, *et als.*, Libellants and Appellees.
} Bonds for costs on appeal.

BEEBE, DEAN AND DONOHUE,
Proctors.

Approved October 24th, 1859.

SAML. R. BETTS.

Filed this 24th day of October, 1859.

By the Honorable Samuel R. Betts, Judge of the Circuit Court of the United States for the Southern District of New York, in the Second Circuit:

To William Nelson, Edward S. Dennis, Francis Bartlett, Sherburne Sears and Aaron Cohen.

Whereas, John O. Woodruff and Robert Henning, survivors of James E. Woodruff, deceased, have lately appealed to the Supreme Court of the United States from a decree rendered in the Circuit Court of the United States for the Southern District of New York, in the Second Circuit, made in favor of you the said William Nelson, and others, against the said John O. Woodruff, *et al.*, and has filed the security required by law. You are therefore hereby cited to appear before the said Supreme Court at the City of Washington, on the first Monday of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the City of New York, in the Southern District of New York, in the Second Circuit, the seventeenth day of October, in the year of our Lord, 1859, and of the Independence of the United States the eighty-fourth.

SAM. R. BETTS.

BEEBE, DEAN, AND DONOHUE,
Proctors of Appellants.

Filed October 25th, 1859.

1481

SUPREME COURT OF UNITED STATES,

DECEMBER TERM, 1861.

No. 79 & 80.

WOODRUFF AND OTHERS,

vs.

NELSON AND OTHERS

SAME *vs.* SAME.

Appellant's Statement, Points, and Authorities.

These were cross actions in the District Court for the Southern District of New York.

Both were tried and decided together, before Hon. S. R. Betts, at the March Term, 1858.

In the original case of Woodruff *vs.* Nelson, the libel was dismissed, (page 66); in that of Nelson *vs.* Woodruff, a decree was entered that the libellants recover, with the usual order of reference, (page 69.)

The minutes of the Judge, and his opinion, do not form a part of the Record; they are as follows, viz:

UNITED STATES DISTRICT COURT,

MARCH TERM, 1858.

[MINUTES.]

WILLIAM NELSON AND OTHERS,

vs.

JOHN O. WOODRUFF, *Survivor, &c.*

JOHN O. WOODRUFF, *Survivor, &c.*,

vs.

WILLIAM NELSON AND OTHERS.

CROSS ACTIONS.

No. 1 is to recover $1838\frac{11}{100}$ freight of a quantity of lard shipped in barrels and tierces at New Orleans, in July, 1854, on board the ship Maid of Orleans, owned by libellants and consigned and delivered to the Respondents in New York, August 14, 1854.

No. 2 is a cross action by John O. Woodruff and others, surviving partners of the firm of James E. Woodruff & Co., of the city of New York, demanding $6000 damages from the respondents, owners of the ship Maid of Orleans, for deficiency in delivery of the lard laded on board the said ship at New Orleans, and consigned to the libellants to the amount of 60,000 lbs—worth about $6000—alleging that the same was lost, owing to bad stowage and want of proper care thereof, on said ship, and that the libellants had made large advances on the said shipment, &c.

The defence set up by answer to the first action, denies the performance of the shipping contract by the ship owners, and alleges the non-delivery and loss on the transportation of the cargo laden on board of 60,000 lbs., of lard, owing to the fault of the ship-owners.

The answer of the ship-owners to the second (the Cross) action, admits the affreightment contract, but denies that the lard was shipped and received on board in good order at New

Orleans, or was lost by the fault or negligence of the ship on the voyage—on the contrary it alleges that the lard was in a liquid state and barrels and tierces in bad order when received on board, and the loss, if any was incurred, was owing to those causes and the temperature of the season; and alleges it was delivered to and accepted by the consignees in this port on the arrival of the ship here.

Betts, J. In the first case above objections were raised by the respondents to the admission of a deposition of Captain Downes taken *de bene esse* by the libellants, on grounds consisting mostly of mere formalities. The witness was examined before a United States Commissioner in this district, and the examination was attended by one of the Proctors for the respondents at the time and place appointed in the morning, but he did not appear at the hour to which the examination was adjourned in the afternoon of the same day, when the proceedings were continued and completed before the same Commissioner. The respondents object that the jurisdiction of the officer to take the deposition is not shown because there is no preliminary proof of the materiality of the evidence, nor is it proved that the commission was sealed up by the Commissioner after it was completed: nor evidence that notice was given or directed to the respondents or their attorney that it had been filed in court, and that the witness was incompetent, being interested in the matter in suit. The latter objection is interposed on the argument and was not offered at the hearing, when it might perhaps have been obviated by proofs on the part of the libellants. The objection accordingly is made too late to avail the respondents.—(1 Greenleaf Ev. § 421.)

Rule 43 of the court required the deposition to be forwarded to the clerk immediately after it was taken and to be filed in the clerk's office on its return there, and notice to be forthwith given by the party filing it to the opposite party. The Commissioner was the clerk of the court, and the deposition was taken before him in the clerk's office and he certifies that he retained it for the purpose of filing it in court, and the official mark of filing it the same day is endorsed upon the commission; and the usual order was at the same time engrossed on the minutes that the deposition be filed and opened. It was also proved on the trial that the commission was seen on the clerk's table in the office the same day by one of respondents proctors. The proctor testified that he knew it had been taken, but did not know it had been filed. I think there is no validity in this exception to the regularity of practice in placing the deposition on file; and the failure of the libellants to give formal notice of the fact to the proctor of the respondents only leaves to the latter to disprove the regularity of the proceedings in taking it. The act of

Congress does not require the deposition to be sealed up and directed to the clerk, in case the Commissioner delivers it personally to that officer. The clerk in this instance being officially the Commissioner who performed the service, the statute is satisfied by this method of performing both functions.—(1 Stats. at Large 89 § 30.)

The evidence produced by the respondents shows a large deficiency in the quantity of lard delivered at this port from that acknowledged by the bills of lading to have been received on board the ship at New Orleans, and the question upon the merits is whether the loss, whatever it may be, is to be borne by the libellants, and may be counter charged against the freight claimed in the action, or whether the stipulated freight can be recoved by ship-owners. The bills of lading are substantially in the usual form, and acknowledging the shipment of a large quantity of barrels and tierces of lard in good order and well conditioned and engaging to deliver the same in New York in like good order to the consignees and the dangers of the seas excepted, and subscribed by the master of the ship with the reservation of "contents unknown."

The fair weight of evidence, is, that the packages were delivered here in the same general external appearance they had when laden on board (with perhaps the exception of one cask in which a stave was broken, and that I think the evidence shows arose from the infirmity of the cask) but greatly diminished in quantity by leakage, The stowage of the cargo is proved to have been unexceptionable. It was also proved that the lard was shipped in the extreme heat of summer; that the voyage was exceedingly hot, boisterous and rough, and that the cargo apparently much melted and liquified and diminished in quantity was delivered in this port to the consignees exposed on the wharf to the sun, and many of the packages were afterwards rolled rapidly the length of the pier, several hundred feet and a portion of it driven thereafter fast into the city to a warehouse.

On this posture of the case, the ship and owners are discharged of responsibility for the full delivery of the cargo, the loss incurred being ascribable to wastage, owing to the character of the cargo, the state of the weather, and the insufficient condition of the packages to secure melted lard, at the time it was laden on board, for safe transportation under those circumstances. In such case, the loss falls upon the shipper and not the carrier.—(Clarke *vs.* Barwell, 12 How. R. 272; 2 Boulay Paty Droit Commercial, 309, 313; *The ship Martha*, 1 Olcott Ad. R, 140; *Bradstreet* vs. *Heron*, 1 Abbott Ad. R. 209; *Terega* vs. *Poppe*, ibid, 397; *Post* vs. *Minturn*, (in this Court,) 22 vol. mss., p. 140; Angell on Carriers, §211, 3 Kent, 8th ed., 289.)

The decree most accordingly be, in the first case, in favor of the libellants for the whole amount of freight and primage remaining unpaid; and, in the second case in favor of the respondents dismissing the libel with costs.

A reference ordered to a commissioner to ascertain and report the amount of freight due the ship owners and decree therefor with costs.

An appeal was taken by Woodruff and others to the Circuit where the decrees were affirmed.

The testimony in each case is identical. For convenience, all references to the testimony will be to No. 80.

ABSTRACT OF PLEADINGS IN NELSON *et al vs.* WOODRUFF *et al.* LIBEL, page 1 of No. 80.

1. Libellants were owners of the Maid of Orleans.

2. In July, 1854, she was at New Orleans, and that Kennett, Dix & Co. shipped on her 1,099 barrels and 61 tierces of lard—weight and contents unknown—to be delivered in New York to J. E. Woodruff & Co., or assigns. At same time, John O. Woodruff & Co., shipped, per same vessel, 111 tierces and 196 barrels, to be delivered to the said James E. Woodruff & Co., and that bills of lading were delivered to the shippers.

3. Arrival of vessel in New York, and delivery of lard to James E. Woodruff & Co., and acceptance by them.

4. Liability to pay freight.

5. Death of James E. Woodruff.

The bills of lading were attached to the libel, (page 3, 4.)

The answer of the survivors of the firm of Jas. E. Woodruff & Co., (page 9,) admits the shipping of the lard by Kennett, Dix, & Co., but denies that the libel sets out the contract correctly—averings that bills of lading do—denies that *all* of said lard was delivered to Jas. E. Woodruff & Co. It also denies, (page 10,) liability to pay freight.

The seventh article of the answer, (page 10,) avers that duplicates of the bills of lading were delivered to the shippers, and by them sent to Jas. E. Woodruff & Co., and that they, *relying on the bills of lading, made large advances thereon.*

The eighth article avers want of care on the part of the ship, in *receiving the lard on board, stowage, in transportation and custody*, and in its *discharge*; whereby a loss of 60,000 lbs., accrued, and negatives loss by perils of sea or fire. Ninth article denies liability for freight, and claims to recoup damages.

In the case of Woodruff and others, survivors, *vs.* Nelson and others, (No. 79) the libel, (page 1 and 2,) avers the re-

ceipt on board the Maid of Orleans, of the lard mentioned, the issuing of the bills of lading, that they were forwarded to Woodruff & Co., *who relying on them advanced upon the lard.*

The arrival of the ship, the demand by libellants of the lard, and the neglect and refusal to deliver.

The negligence of respondents in receipt, stowage, transportation, care and custody, discharge and delivery and loss occasioned thereby.—(Page 11.)

The answer of the respondents, at page 6, admits, *that the quantity of lard charged, viz:* 1,295 *barrels and* 172 *tierces*, was received by them. It denies only the *condition of the lard*, not of the packages in which it was contained.

It admits receipts by libellants of the bills of lading, denies advances on them.

The fifth article of answer, avers the delivery of the lard to libellants and if any of it was lost, *it arose from the liquid state in which it was put into the casks, the heat of the season and the leakage from the casks*, it does not aver that the casks were *imperfect or unfit for the purpose.*

POINTS.

I. The plaintiffs, on receipt of bills of lading, advanced on this lard, prior to the arrival of the ship, $28,000.

Testimony of John C. Redmand, page 15.
Copy drafts, page 52, 53.

II. There was a deficiency of fifty thousand pounds between the amount of lard received at New Orleans and the amount delivered at New York.

Testimony of John C. Redmand, page 15.
John Hood, page 16.
Weigher's returns, page 55.
George McGroth, page 22.

There is on this subject no conflict in the evidence; and in the libel against Nelson and others, they admit it.

III. The owners of the ship were guilty of negligence in the receipt and the stowage of the lard.

1. By the freight engagement they were bound "to take the lard on the ship as fast as it came."

Testimony of Thos. I. Dix, page 40.

2. The nature of the article, and the packages in which it was contained, as well as the custom of New Orleans, imposed the same obligation.

Testimony of Dix, page 41.
Do. Sloan, page 43.
Do. Mussina, page 49, 50.

3. It was not put on board with the proper despatch.

Testimony of Dix, page 41.
Do. Dennen, page 45.
Do. Murphy, page 47.

The evidence of Nelson does not overcome this.

Testimony of Schinkle, page 29.
Do. Woadley, page 31.
Do. Soria, page 34.

The mate was not called.

Why not? He was present and received the Lard. (page 48.)

4. The lard was not properly stowed. The style of stowage was "bilge and bilge,"—it should have been "bilge and cantling." There was not sufficient "dunnage." There were too many tiers; the weight upon the lower tiers, necessarily, by the pressure opens the staves at the bilge and causes leakage.

Stowage "bilge and bilge." Testimony of libellants witness, John Wright, page 19; "lard formed a sort of bulkhead up to main hatch from aft; could see upper tier; the casks were tiered up from floor to deck *regularly*. There was some space between deck or top tier, not wide enough to admit a barrel." * * * * "It was flush on face of lard."

Capt. Dennis testifies that it was stowed, in "some places four tiers in some five tiers." (p. 67.)

"There was no dunnage except on the ground tiers."

Testimony of Candler, 20.
" " Geran, 21.

Upper tiers require dunnage.

Testimony of Yeadon, 21.

Three tiers as high as prudent for stowage.

Testimony of McGrath, p. 22.
" " Fisher, p. 22.

Opposed to this, as to stowage, is only the testimony of Candler, who supposes that his surveys of cargoes "average three to five daily."

5. That the stowage was improper, or that there was negligence in receiving the lard on board, is evident from the physical fact—only one package was insufficient—the loss was forty-five per cent. more than it should have been.

6. The ship owner is responsible for improper stowage, want of sufficient dunnage, and the *onus*, in a case of this kind is upon him, and not the shipper, and if the casks at the time of their receipt or afterwards required coopering or other attentions he was bound by his contract to give it.

Angell on Carriers § 210, 211, 212.
Warden *vs.* Greer; 6 Watts, Penn. R. 424.
Abbott on shipp., 346.

IV. The shippers, on the well settled principles of mercantile law, were, and are liable to answer to the respondents for the excess of loss on this lard. To hold otherwise would not only be unjust in the particular case pending between these parties, but would violate the well established commercial principles on which mercantile transactions are founded.

1. The libellants are by the undisputed facts in the case in a dilemma. Either the lard was "in good order and well conditioned" when received, or it was not. If it was, respondants are responsible for the loss because they have not shewn that it was occasioned "by the dangers of navigation or fire." If it was not, then they are liable for having falsely asserted the fact by the bill of lading, and appellants having advanced on it, respondents are in law and good faith estopped from averring the contrary.

1 Greenleaf Ev., §207.
Dezell *vs.* Odell, 3 Hill, (N. Y.,) 221.
Welland C. Co. *vs.* Hathaway, 8 Wend. 483.
Bradstreet *vs.* Herran, 2 Blatch., 116.
Bank of Pittsburgh *vs.* Neal, 22 How., 96.
Goodman *vs.* Simands, 20 How., 363.

2. The appellants having advanced on these bills, they are for all the purposes of these actions to be treated as *bona fide* holders of negotiable paper.

3. The respondents, by the bill of lading, have admitted that so far as the external appearance of the packages were concerned, they were in good order, and if therefore they were taken on board when "leaking badly," and some of them "half out," it cannot be set up by respondents in these actions.

1 Greenleaf Ev., §305.
Clark *vs.* Barnwell, 12 How., 272.
Ellis *vs.* Willard, 5 Selden, 529.

V. It seems scarcely necessary in this Court to say, that a ship engaged in carrying for hire, from port to port, merchandize, is a common carrier, and that her owners are subject to all the strict liabilities which the law imposes upon such carriers.

Angell on Carriers, §87 and 88, and cases there cited.

VI. The appellants, having on the law applicable to the cases, made out a clear preponderance of evidence establishing the proposition that the loss was occasioned by the fault and negligence of the ship, and not by the innate vice of the cargo, are entitled to a reversal in both cases.

GILBERT DEAN,
Counsel for Appellants.

1691

SUPREME COURT,

OF THE UNITED STATES.

WILLIAM NELSON *et al.*, RESPONDENT,
vs.
JOHN O. WOODRUFF, *et al.*, SURVIVOR, &c., APPELLANT.
— ORIGINAL LIBEL.

JOHN O. WOODRUFF, *et al.*, SURVIVOR, &c., APPELLANT,
vs.
WILLIAM NELSON *et al.*, RESPONDENTS.
— CROSS LIBEL.

APPEAL FROM CIR. CT., S. DIS. N. Y. IN ADMIRALTY.

ABSTRACT OF CASE

AND

RESPONDENTS' POINTS.

GOODMAN & JESUP,
Proctors.
R. GOODMAN,
Counsel.

NEW YORK:
W. C. BRYANT & CO., PRINTERS, 41 NASSAU ST., COR. LIBERTY.

1861.

Wm. C. Bryant & Co., Printers, 41 Nassau Street, cor. Liberty. N. Y.

1698

Supreme Court,

OF THE UNITED STATES.

William Nelson, *et al.*,
vs.
John O. Woodruff, *et al.*, Survivors, &c.

John O. Woodruff, *et al.*, Survivors, &c.,
vs.
William Nelson, *et al.*

} Abstract of the Case and Points.

These are cross-actions, originally commenced by libel in admiralty in the Southern District of New York.

The first was brought by Nelson, *et al.*, the owners of the ship *Maid of Orleans*, to recover $1,838$\frac{1}{100}$ freight of a quantity of lard shipped in barrels and tierces at New Orleans in July, 1854, on board said vessel, and consigned and delivered to the house or commercial firm of which Woodruff, *et al.*, are the surviving copartners, in New York, August, 1854.

The second is a cross-action commenced by said consignees Woodruff & Co. simultaneously with their defence to the first action, demanding $6,000 damages from the owners of the said ship *Maid of Orleans*, for deficiency in delivery of the said lard, to the amount of 60,000 lbs., and

alleging that the same was lost owing to bad stowage and want of proper care thereof on said ship, and that the said Woodruff & Co. had made large advances on the said shipment, &c.

The defence set up by answer to the first action denies the performance of the shipping contract by the shipowners, and alleges the non delivery and loss on the transportation of the cargo laden on board of 60,000 lbs. of lard, owing to the fault of the shipowners.

The answer of the shipowners to the second (the cross) action admits the affreightment contract, but denies that the lard was shipped and received on board in good order at New Orleans, or was lost by the fault or negligence of the ship on the voyage. On the contrary, it alleges that the lard was in a liquid state, and barrels and tierces in bad order when received on board, and the loss, if any was incurred, was owing to those causes and the temperature of the season, and that it was delivered to and accepted by the consignees in this port on the arrival of the ship here.

Libel in first action, paper book No. 158, p. 1.
Answer " " " 9.
Libel in second or cross-action, " 157, p. 1.
Answer " " " 5.

The actions were tried together in the District Court, before Betts, Justice, and decree made in favor of the libellants in the first action for the amount claimed, with costs; and in the cross action a decree was made dismissing the libel with costs.

Decree in first action, book No. 158, pp. 69, 73.
" cross-action, " 157, p. 61.

On appeal to the Circuit Court for the Southern District of New York, the causes were heard together before Mr. Justice Nelson, and the decrees of the District Court affirmed.

Decree of Circuit Ct., book 158, p. 77.
Decree of Circuit Ct. (cross-action), book 157, p. 70.

The respondents in the original action (the libellants in the cross-action) appeal to this Court.

On the trial in District Court the libellants examined witnesses to prove delivery of cargo and amount of freight. The respondents examined witnesses to show the condition of the lard when received, and the amount of the loss of lard, and read the testimony of witnesses at New Orleans, taken on commission, to show the proper delivery of the lard at the ship, and that the wastage was the fault of the carrier. The libellants introduced counter testimony, taken in same manner, showing there was no negligence on the part of the carrier, but that there was on the part of the shipper, and that the leakage was owing principally to the character of the cargo and the severely hot weather. The libellants also called stevedores, as experts, to corroborate the testimony of eye-witnesses that the cargo was well stowed. There was no addition to the testimony on either side in the Circuit Court.

The bills of lading are at pp. 3, 4, book 158.

The greater portion of the testimony was taken at New Orleans, upon commissions issued in an action originally brought in a State court to recover the amount of freight, which action was discontinued, and the testimony therein taken, used by consent in the U. S. Courts below.

The *following facts* are established by the evidence, (as the evidence was the same in each case, reference will be hereafter made to the paper book, No. 158, containing case in first action.)

1. The whole number of packages shipped on board at New Orleans, and called for the bills of lading, were delivered to the consignees, in the city of New York, in August, 1854.

Book 158, pp. 14, 19.

There were no barrels or tierces not delivered. The ten empty barrels were made so after delivery, by the consignee emptying the contents of those into other barrels for exportation, id., p. 19. Respondents' witness Bensell, id., p.

16; only one package appeared to be injured by other causes than heat, and that was owing to defective stave, p. 19.

2. The packages when delivered to the ship at New Orleans were put on board as rapidly and carefully as possible. "It was put on board immediately when received." "It was taken aboard carefully."

Dennis' deposition, p. 67.
Schinckle's testimony, p. 29.
Woodley's " 31.
Soria's " 34.

Three of the respondents' witnesses attempt to show that some of the lard was left on the levee, after it came down. But one (Dix, p. 41.) on cross-examination, shows he was only *informed* such was the case by his boss draymen, who is not examined as a witness, and the other two witnesses (Dennen, p. 45, and Murphy, p. 47) do not corroborate each other, and the statements of each are expressly contradicted by all the libellants' witnesses. (*Supra.*)

3. The lard was well stowed on board the ship.

All the witnesses who *saw* the cargo agree in this, that it was stowed in the usual and best manner, and dunnaged where it needed it, and the experts called by libellants, corroborate the evidence of the ocular witnesses.

John Wright (p. 19) examined cargo when hatches opened.
Saml. Candler, (p. 20,) marine surveyor, saw it.
F. S. Gerau, (p. 20,) cooper, examined it.
J. H. Yeadon, (p. 21,) an expert, proves it well stowed.
J. Z. Phillips, (p. 21,) an expert, proves it well stowed.
E. Schinkle, (p. 29,) " "
Capt. Dennis (p. 67) says, "Particular attention was paid to stowing it."
Respondents' witness, Dix (p. 41).

There is no testimony on the part of the respondents to contradict these facts. The only testimony on their behalf is as to *stowage* in warehouses, an altogether different mode.

4. The loss of the lard from the packages arose from causes beyond the control of the carriers.

1. The weather at the time of the shipment, carriage, and delivery, was unusually hot; hotter than it had been for 25 years previous thereto. (Schinkle, p. 30; Wooley, p. 31; Beard, p. 32; Soria, p. 34; Sloan, witness of respdt., p. 42–3–4; Dennen, p. 44–5; Mussina, p. 49–50; also witnesses for respdt. Wright in New York, p. 19.)

2. The lard was in a melting state when brought from the warehouses.

G. R. Beard, p. 33.
Schinkle, " 29.

3. It was brought to the levee at New Orleans by the consignors, in uncovered waggons or drays, as late as 10 o'clock A. M., and as early as 4 P. M., *almost the hottest parts* of the day.

Respondents' witness, Murphy, p. 47. *This witness was the drayman who hauled the lard.* Capt. Dennis p. 67; "there was no covering on the drays over the packages." See Dix's testimony as to effect of sun heat.

4. There were no warehouses nor sheds on the levee, and some of the lard had to be coopered before it could go on board ship.

Thomas J. Dix, p. 40–41; Shinckle, p. 29.

5. The lard was in a liquid condition when delivered to the ship. Some of the packages had "already lost part of their contents," respondents' witnesses prove it could not be otherwise.

Mussina, p. 49; Bensel, 16; Schinkle, p. 29; Woodley, p. 31; Dennis, p. 67.

6. The casks on top of the cargo leaked as much as those at the bottom. (Candler, 20.)

7. Being laden in such hot weather, and the hatches battened down as necessary on all voyages, the hold of the ship remained very hot, and the lard continued in a liquid state, the staves shrank, and the lard leaked out.

Dennis, Captain, as to hatches and heat of hold, p. 67.
Wright—heat of hold—shrinkage, p. 19.
Candler " " 20.
Gerau " " 20–21.
Fisher (respondents' witness) 22.
Dibble " " 17.
Bensell " " 16.

8. The ship had rough weather on the passage. (Candler, p. 20.)

9. After delivering from ship it was rolled 300 feet on the pier, and then carted over cobble stones in its liquid state by "unlicensed cartmen who worked by the *piece*," and of course the "lard run out of the packages freely."

Respondents' testimony, Dubois, p. 14, 15.

5. There was no proof of any unusual leakage of the lard *for the season of the year it arrived in.*

The only evidence of amount of leakage is that of a weigher who weighed it after it arrived in the warehouse. No account was taken of the loss by leakage before put on ship nor while on board, nor while it was being carted, nor of the 250 bbls. transhipped at New York on arrival.

None of the witnesses had weighed lard arriving in *August.*

See respondents' testimony, Wood, p. 16, Dibble, 17.

Points.

First.—It is evident from the testimony, that the loss of the lard was from the excessively hot weather, causing the lard to melt, the staves of the barrels to shrink, and the contents to run out.

The testimony shows that all cargoes of lard coming from Southern ports suffer more or less from leakage at all seasons, and the leakage increases in the ratio of the heat.

Lard melts at 97°, is composed of *elain* and *stearin*. Elain is always fluid at common temperature. In hogs' lard (which this was) the proportion is 62 elain to 38 stearin. *Brand's encyl.* Bensell, Respdt's wits., p. 16, says: "lard when liquid shrinks the casks."

Second.—The ship-owners' duty was discharged on receiving the *packages* on board their ship, stowing them properly and delivering to the consignees.

The bills of lading describe only the packages, and the freight was thereby payable on the packages by the *piece* and not by the *weight* of the contents. The contents were expressly said to be "unknown," and the carriers had no authority to explore them.

All the packages were delivered to consignees.

Third.—There is no loss proven for which the carriers are responsible.

Only one barrel or package is shown to have been injured, and that from a defective stave.

Wright, p. 19.

The ten empty barrels were emptied of their contents after the delivery of the cargo, by the consignees' direction. Id.

There is no evidence to show that the barrels were full when shipped; some of them were not. It is only a presumption that the others were full, and that presumption is destroyed by the evidence of many of the same lot being empty.

The barrels were leaking to some extent before being shipped, during the voyage, and when delivered, and the leakage is not shown to have been any greater on board the ship, than when the packages were put on board.

The witnesses all concur that the loss was owing to the *heat*.

The cargo was shipped on board during the hottest season of the year, and the season of that year was the hottest for many years. The passage was rough and the weather continued hot, until after cargo discharged.

The shipper took the risk of these circumstances.

The lard had been kept a portion of the summer in New Orleans, in a warehouse, the floor of which, at the time of this cargo coming out, showed great leakage.

Fourth.—The carrier is not an insurer against leakage caused by heat, nor the insufficient protection of the packages, nor the intrinsic decay of the cargo.

3 Kent, 8 Ed., 289.

Angell on Carriers, §§ 211, 214.

Clark *vs.* Barnwell, 12 Howard R., 272, and cases cited.

Also cases cited in opinions of Betts J., and Nelson J., hereto annexed.

Fifth.—The shippers at New Orleans contributed to the natural causes producing the leakage, by carting

the lard in uncovered drays, at almost the hottest parts of the day, when even in ordinary weather custom and ordinary prudence required the carting in the cool of the morning and evening, and the packages to be protected from the sun.

Respt's Witns. Sloan, p. 43.

Respondents' witness Dix, who got all his information from hearsay, swears it was carted in the cool of the day. So does Dennen, who also swears the lard when hauled was in "splendid condition," and is one of the witnesses who pretends some of the lard was left on the levee one night—but the man who hauled the lard, assisted by four or five others and the respondents' own witness, puts at rest this loose testimony by swearing that the lard was hauled as late as ten in the forenoon, *and as early as between three and four in the afternoon.*

Murphy, p. 4.

This negligence of the respondents' agents was a proximate cause of the injury to the lard, and even if the carriers had been in fault, no recovery could be had against them for such injury.

Downe *vs.* Steam Nav. Co., 5 Ellis & Bain, 195.

Trow *vs.* Vermont C. R. R. Co., 24 Vermont, 487.

Hawkins *vs.* Cooper, 8 Carr & Payne, 473.

Button *vs.* Hudson R. R. Co., 18 N. Y. R., 248.

But it is evident from the testimony that the carriers discharged their duty.

Sixth.—The objection to the *de bene esse* testimony of Captain Dennis was properly overruled. The reasons set forth in the opinion of the District Judge are conclusive.

Opinion annexed.

It was admitted by the counsel taking the objection that he saw it in the clerk's office after it was taken, and it was taken on notice to him.

The rule of Court was for the benefit of the party taking the testimony to give *him* an opportunity to re-take it if any formal objection was taken.

Betts' Admiralty Prac., 86.

Rules of Court ought not to be used at the expense of the substantial merits.

1 Barbour's N. Y. R., 57.

It was not shown that the party suffered any inconvenience, much less injury, by not receiving formal notice of deposition being filed. Seeing the deposition after it was taken, coupled with the previous notice of the intention to take it, was good notice.

Seventh.—The appeals to this Court should be dismissed, with costs, and the decrees of the Circuit Court affirmed.

R. GOODMAN,
Counsel for Respts.

1503

Opinion of Betts, J., in Dis. Court.

U. S. DISTRICT COURT.

WILLIAM NELSON and others, *vs.* JOHN O. WOODRUFF, Survivor, &c.	March Term, 1858.
JOHN O. WOODRUFF, Survivor, &c., *vs.* WILLIAM NELSON, and ors.	

BETTS, J.—In the first case above, objections were raised by the respondents to the admission of the deposition of Capt. Dennis taken *de bene esse* by the libellants, on grounds consisting mostly of mere formalities. The witness was examined before a United States commissioner in this district, and the examination was attended by one of the proctors of the respondents, at the time and place appointed in the morning, but he did not appear at the hour to which the examination was adjourned, in the afternoon of the same day, when the proceedings were continued and completed before the same commissioner.

The respondents object that the jurisdiction of the officer to take the deposition is not shown, because there is no preliminary proof of the materiality of the evidence, nor is it proved that the commission was sealed up by the commissioner after it was completed; nor evidence that notice was given or directed to the respondents or their attorney, that it had been filed in Court, and that the witness was incompetent, being interested in the matter in suit. The latter objection is interposed on the argument, and was not offered at the hearing, when it might, perhaps, have been obviated by proofs on the part of the libellants. The objection accordingly is made too late to avail the respondents. (1 Greenl. Ev., § 421.)

Rule 113 of the Court, required the deposition to be forwarded to the clerk immediately after it was taken, and to

be filed in the clerk's office on its return there, and notice to be forthwith given by the party filing it, to the opposite party. The commissioner was the clerk of the Court, and the deposition was taken before him in the clerk's office, and he certifies that he retained it for the purpose of filing it in Court, and the official mark of filing it the same day is endorsed upon the commission, and the usual order was at the same time entered on the minutes that the deposition be filed and opened.

It was also proved on the trial that the commission was seen on the clerk's table in the office the same day by one of respondent's proctors. The proctor testified that he knew it had been taken, but did not know it had been filed.

I think there is no validity in this exception to the regularity of practice, in placing the deposition on file; and the failure of the libellants to give formal notice of the fact to the proctor of the respondents only, leaves open to the latter to disprove the regularity of the proceedings in taking it.

The Act of Congress does not require the deposition to be sealed up and directed to the clerk in case the commissioner delivers it personally to that officer. The clerk in this instance being officially the commissioner who performed the service, the statute is satisfied by this method of performing both functions. (1 Stat. at Large, 89, § 30.)

The evidence produced by the respondents shows a large deficiency in the quantity of lard delivered at this port, from that acknowledged by the bills of lading to have been received on board the ship at New Orleans, and the question upon the merits is, whether the loss, whatever it may be, is to be borne by the libellants, and may be countercharged against the freight claimed in the action, or, whether the stipulated freight can be recovered by ship-owners. The bills of lading are substantially in the usual forms, acknowledging the shipment of a large quantity of barrels and tierces of lard in good order, and well conditioned, and engaging to deliver the same in New York, in like good order to the consignees, &c., the dangers of the seas excepted, and subscribed by the master of the ship with the reservation of "*contents unknown.*"

The fair weight of evidence, is, that the packages were delivered here, in the same general external appearance they had when laden on board (with perhaps the exception of one cask in which a stave was broken), (and that I think the evidence shows, arose from the infirmity of the cask), but greatly diminished in quantity by leakage. The stowage of the cargo is proved to have been unexceptionable. It was also proved that the lard was shipped in the extreme heat of summer, that the voyage was exceedingly hot, boisterous, and rough, and that the cargo, apparently much melted and liquified, and diminished in quantity, was delivered in this port to the consignees, exposed on the wharf to the sun, and many of the packages were afterwards rolled rapidly the length of the pier, several hundred feet, and a portion of it driven thence fast, into the city to a warehouse.

On this posture of the case, the ship and owners are discharged of responsibility for the full delivery of the cargo, the loss incurred being ascribable to wastage, owing to the character of the cargo, the state of the weather, the insufficient condition of the packages to secure melted lard at the time it was laden on board, for safe transportation under those circumstances. In such case the loss falls upon the shipper, and not the carrier. (*Clarke* v. *Barnwall*, 12 How. R., 272; 2 Boulay Paty. Droit., Commercial, 309, 313. The ship *Martha*, 1 Olcott Ad. R., 140; *Bradstreet* vs. *Heron*, 1 Abbott Ad. R., 209; *Terega* vs. *Popp*, ibid, 307; *Post* vs. *Minturn*, (in this Court) 22 Vol. Mss., p. 140; Angel on Carriers, § 211, 3 Kent, 8th Ed., 289.)

UNITED STATES CIRCUIT COURT.

WILLIAM NELSON, *et al.*,
vs.
JOHN O. WOODRUFF.

JOHN O. WOODRUFF,
vs.
WILLIAM NELSON.

NELSON, C. J.,—The libel was filed in the first case by the libellants, to recover freight upon a shipment of 1,099 barrels, and 61 tierces of lard, on the ship *Maid of Orleans*, from New Orleans to this port, in July and August, 1854.

It was filed in the second case by the consignee, against the respondent, to recover damages for a loss of part of the lard in the course of the shipment. Both cases depend upon the same evidence, and were heard together in the Court below, and in this Court.

It is not denied but that a very heavy loss of the lard occured on board the vessel during the voyage, which was discovered upon discharging the cargo at this port, a loss of about 60,000 pounds, worth some $6,000.

The bills of lading are in the usual form, "shipped in good order," &c., "damages of the sea, &c., excepted," to which is added at the foot, "contents unknown."

The weather was excessively hot in New Orleans in the month of July, 1854, when the lard was put on board, and when delivered by the shipper on the levee, which was done morning and evening, to avoid the heat of the day. The delivering, however, was continued in the morning till 10 o'clock, A. M., and renewed between 3 and 4, P. M., and, according to the weight of the testimony, the lard was taken on board of the vessel with all reasonable dispatch. When taken on board, it was found to be in a liquid state, and a few of the barrels leaked so badly at the levee, that the hoops had to be tightened, and some of the barrels were found to be partially empty.

The great deficiency in the quantity that occurred in the course of the shipment, is attributable to the leakage of the casks, which the shipowner insists is chargeable alone to the condition and character of the article, and to the excessive hot weather at the time of the shipment, and during the voyage.

The proofs in the case taken at New Orleans and at this port are very full and satisfactory, that the lard was properly and skillfully stowed, both in respect to the place in the hold of the vessel and the manner of the stowage. And it is further shown, that all due and proper care was taken of it in the course of the shipment; and I perceive nothing in the evidence, when critically examined, and weighed, in the appearance or condition of the packages, when discharged at this port, going to impair the proof of the libellants on this head. The barrels and tierces appear to have been well made, and with proper material, and to have withstood the shipment, without any substantial injury, with the exception that the seams were opened, and hence the leakage. But this is accounted for by nearly all the witnesses experienced in the shipment of the article, as resulting from the effect of the hot weather, in connection with the tendency of the melted lard to shrink the staves, and loosen the hoops. The proof is, that the months of July and August, 1854, were hot beyond those of many preceding years, and that on opening the hatches, after the arrival of the vessel at this port, the heat in the hold was so excessive, that no person could remain in it.

It is well settled that the shipper takes the risks attendent upon a shipment of cargo of this character from the heat of the weather, unless some neglect or fault can be charged upon the vessel contributing to the loss. (12 How., 272.) And I must say, after a very careful examination of the evidence, that in my judgment, no such negligence or fault has been established.

SUPREME COURT OF THE UNITED STATES.

No. ~~158.~~ 80.

JOHN O. WOODRUFF AND ROBERT M. HENNING, SURVIVORS OF JAMES E. WOODRUFF, DECEASED, APPELLANTS,

vs.

WILLIAM NELSON, EDWARD S. DENNIS, FRANCIS BURRITT, SHERBOURNE SEARS AND AARON COHEN.

CLVIII. GIDEON, Printer, 511 Ninth Street, D.C.

SUPREME COURT OF THE UNITED STATES.

No. 158.

JOHN O. WOODRUFF AND ROBERT M. HENNING, SURVIVORS OF JAMES E. WOODRUFF, DECEASED, APPELLANTS,

vs.

WILLIAM NELSON, EDWARD S. DENNIS, FRANCIS BURRITT, SHERBOURNE SEARS AND AARON COHEN.

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Certificate of Clerk of Circuit Court.

UNITED STATES OF AMERICA, }
SOUTHERN DISTRICT OF NEW YORK. } ss.

I, Kenneth G. White, Clerk of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, do hereby Certify that the Writings annexed to this Certificate are true copies of their respective Originals, on file, and remaining of record in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this twenty-seventh day of November, in the year of our Lord one thousand eight hundred and fifty-nine, and of the Independence of the said United States the eighty-fourth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

At a Stated Term of the District Court of the United States of America, for the Southern District of New York, held at the City Hall, in the City of New York, on Thursday, the thirteenth day of May, in the year of our Lord one thousand eight hundred and fifty-eight

Present: The Honorable Samuel R. Betts, District Judge.

WILLIAM NELSON, and others, }
vs. } Dec. 8th, 1856.
JOHN O. WOODRUFF, and another. }

Libel.

The Libellants file their Libel, in the words and figures following, to wit:

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern District of New York.

The Libel of William Nelson, Edward S. Dennis, Francis Bartlett, Sherburne Sears, and Aaron Cohen, owners of the ship Maid of Orleans, her tackel, apparel and furniture, against John O. Woodruff and Robert M. Henning, surviving co-partners of James E. Woodruff, deceased, late composing the firm of James E. Woodruff & Co., of the City of New York, merchants, in a cause of contract, civil and maritime, alleges as follows:

First. That they were, at the times hereinafter mentioned, and still are, the owners of the ship Maid of Orleans, and that E. Dennis was then the master thereof.

Second. That in the month of July, 1854, the said ship, then lying at the port of New Orleans, and destined on a voyage thence

to the port of New York, Kennett, Dix & Co., shipped on board the said vessel, one thousand and ninety-nine barrels of lard and sixty-one tierces of lard, weight and contents unknown, to be therein carried from the said port of New Orleans to the said port of New York, and there to be delivered, the dangers of the sea and fire only excepted, in like good order as they were received to the said J. E. Woodruff & Co., or to their assigns, he or they paying freight for the same at the rate of one dollar and fifteen cents per barrel, and one dollar and fifty cents per tierce, with five per cent. primage and average accustomed. And at the same time, John O. Woodruff & Co. shipped on board the said vessel, at the said port of New Orleans, one hundred and eleven tierces of lard, and one hundred and ninety-six barrels of lard, weight and contents unknown, to be therein carried from the said port of New Orleans to the said port of New York, and there to be delivered, the dangers of the sea and fire only excepted, in like good order as they were received, to the said James E. Woodruff & Co.; or to their assigns, he or they paying freight for the same at the rate of one dollar and fifteen cents per barrel, and one dollar and fifty-three cents per tierce, with five per cent. primage and average accustomed. And accordingly the said master, at the port of New Orleans, on the 11th day of July, 1854, affirmed to the usual bills of lading, and delivered the same to the shippers of said cargo, copies of which several bills of lading are hereto annexed marked schedules A. and B.

Third. That soon after the said ship with said cargo on board set sail from New Orleans to New York and there in due time, to wit, on or about the 14th day of August, 1854, safely arrived, and the said lard was duly delivered to the said James E. Woodruff & Co., and was by them accepted and received.

Fourth. That by reason of the premises, the said James E. Woodruff, John O. Woodruff, and Robert M. Henning, then composing the said firm of James E. Woodruff & Company, became bound to pay to these libellants the freight of the said merchandise, and also the primage as aforesaid, which amounted in the whole to the sum of one thousand eight hundred and thirty-eight dollars and eleven cents, as is more particularly set forth in the schedule hereto annexed, marked C.

Fifth. That thereafter, the said James E. Woodruff departed this life, and the defendants John O. Woodruff and Robert M. Henning have him survived.

Sixth. That the said co-partners in the lifetime of the said James E. Woodruff, and the said defendants since his death, notwithstanding they have accepted and received the said merchandise, in manner aforesaid, have refused to pay the freight for the same, although often thereto requested and there is now due the libellants for the freight on the said merchandise with primage aforesaid, the sum of one thousand eight hundred and thirty-eight

dollars and eleven cents, with interest from the 14th day of August, 1854.

Seventh. That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this honorable Court.

Wherefore the libellant prays that a citation, in due form of law, according to the course of this honorable Court in cases of admiralty and maritime jurisdiction, may issue against the said John O. Woodruff and Robert M. Henning, and they be cited to appear and answer upon oath all and singular the matters aforesaid, and that this honorable Court would be pleased to decree payment of the freight aforesaid, with interest and costs, and that the libellants may have such other and further relief in the premises as in law and justice they may be entitled to receive.

W. NELSON.

Sworn to before me, this 18th day
of November, 1856.

R. E. STILWELL, *U. S. Com'r.*

GOODMAN & JESUP, *Proctors.*
E. C. BENEDICT, *Advocate.*

Schedule A.

Kennett, Dix & Co., Commission and Forwarding Merchants, New Orleans.

Shipped, in good order and well-conditioned, by Kennett, Dix & Co., for account and risk of whom it may concern, on board the good ship called the Maid of Orleans, whereof E. P. Dennis is Master for the present voyage, now lying at the port of New Orleans and bound for New York, the following articles:

Burrows & Pettiman,			
293	Two hundred and ninety-three bbls.		lard,
M & C 319	Three hundred and nineteen	do	do
Green & Stone, lump,			
205	Two hundred and five	do	do
H 233	Two hundred and thirty-three	do	do
38	Thirty-eight tierces		lard,
P 23	Twenty-three do	do	
	Seven bbls.	do	
Green & Stone,			
D $\frac{42}{1160}$	Forty-two bbls.	do	

Being marked and numbered as in the margin, which are to be delivered, without delay, in the like good order at the port of New York, (the dangers of the sea and fire only excepted,) unto J. E. Woodruff & Co., or to their assigns, he or they paying freight for the said goods at the rate of $1.15 per bbl. and $1.50 per tierce, with 5 per cent. primage and average accustomed.

In witness whereof, the master or purser of said ship hath

affirmed to three bills of lading, all of this tenor and date, one of which being accomplished the others to stand void.

Dated in New Orleans this 11th day of July, 1854.

Contents unknown.

For the owners,
DAVID McCOURD.

Schedule B.

Shipped, in good order and condition, by Jas. E. Woodruff & Co., on board the ship called the "Maid of Orleans," whereof Dennis is master, now lying in the port of New Orleans and bound for New York.

To say,

W 111 One hundred and eleven tierces lard,
196 One hundred and ninety-six bbls. lard.

Being marked and numbered as in the margin, and are to be delivered, in the like good order and condition, at the port of New York, (the dangers of the navigation and fire only excepted,) unto James E. Woodruff & Co., or to their assigns, he or they paying freight for the said lard $1.15 per barrel, and $1.53 per tierce, with 5 per cent. primage, and average accustomed.

In witness whereof, the master of the said vessel hath affirmed to three bills of lading, all of this tenor and date, one of which being accomplished the others to stand void.

New Orleans, July 11, 1854.

Contents unknown.

For the owners,
DAVID McCOURD.

Schedule C.

Messrs. James E. Woodruff & Co.,
To ship "Maid of Orleans," Dr.

To freight from New Orleans:

1099 Bbls. of lard, freight $1.15 per bbl.,	. .	$1263.85
61 Tierces do do 1.50 per tierce,	. .	91.50
Primage as above,	. . . . .	67.77
111 Tierces of lard, freight $1.53 per tierce,	. .	169.83
196 Bbls. do do 1.15 per bbl.	. .	225.40
Primage as above,	. . . . .	19.76
New York, August 14th, 1854.		$1838.11

Endorsed 14, 19, U. S. District Court, Southern District of New York.

WILLIAM NELSON and Others,
Agents for John O. Woodruff and another.

Libel.

GOODMAN & JESUP, *Proctors for plaintiff.*

Filed, Dec. 8, 1856.

District Court of the United States for the Southern District of New York.

(Filed the 8th day of Dec., 1856.)

Stipulations to Libellant's Costs,

Entered into pursuant to the Rules and Practice of this Court.

Whereas a libel was filed in this Court, on the 8th day of Dec., in the year of our Lord one thousand eight hundred and fifty-six, by William Nelson *et al.* against John O. Woodruff *et al.*, for the reasons and causes in the said libel mentioned, and praying that a citation in due form of law may issue against said respondents, and the said libellant and Wm. Nelson, Jr., surety parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the libellants or the surety, execution may issue against their goods, chattels and lands for the sum of one hundred dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is, bound in the sum of one hundred dollars, conditioned that the libellants above named, shall appear and answer to the cause and to interrogatories, and shall pay all such costs as shall be awarded against them by this Court, or in case of an appeal by the Appellate Court.

WM. NELSON,
By WM. NELSON, Jr., *Agent*,
WM. NELSON, JR.

Taken and acknowledged this 8th day of December, 1856, before me.

GEO. H. BETTS,
U. S. Commissioner.

Southern District of New York, *ss.:*

Wm. Nelson, Jr., party to the above stipulation, being duly sworn, doth depose and say, that he resides in the city of Brooklyn, and that he is worth the sum of two hundred dollars over and above all his just debts and liabilities.

WM. NELSON, JR.

Sworn to this 8th day of December, 1856, before me.

GEO. F. BETTS,
U. S. Commissioner.

Recorded the 8th day of December, 1856.

GEO. F. BETTS, *Clerk.*

The President of the United States of America,
To the Marshal of the Southern District of New York, greeting:

Whereas a libel has been filed in the District Court of the

United States of America for the Southern District of New York, on the eighth day of December, in the year of our Lord one thousand eight hundred and fifty-six, by William Nelson and other libellants, against John O. Woodruff and Robert M. Henning in a certain action civil maritime for freight therein alleged to be due and owing the said libellant, amounting to $1838.11, and praying that a citation may issue against the said respondent pursuant to the rules and practice of this Court.

Now, therefore, we do hereby empower, and strictly charge and command you, the said Marshal, that you cite and admonish the said respondents, if they shall be found in your District, that they be and appear before the said District Court on the twentieth day of January inst., at the City Hall in the city of New York, then and there to answer the said libel, and to make their allegations in that behalf; and have you then and there this writ, with your return thereon.

Witness the Honorable SAMUEL R. BETTS, Judge of said Court, this 14th day of January, in the year of our Lord one thousand eight hundred and fifty-seven, and of our Independence the eighty-first.

GEORGE F. BETTS, *Clerk.*

R. GOODMAN, *Proctor.*

(Endorsed.)
Vol. 14, No. 19.
United States District Court.

William Nelson *et als.* }
vs. }
John O. Woodruff *et al.* }

Citation returnable January 20, 1857.

R. GOODMAN,
Proctor for Libellants.

We hereby agree to appear for the respondents, and to file and perfect an answer to the libel on file on or before the 20th January instant.

BEEBE, DEAN & DONOHUE, *Proctors.*

Jan. 14, 1856.

The President of the United States of America,
To the Marshal of the Southern District of New York, greeting:

Whereas a libel has been filed in the District Court of the United States of America for the Southern District of New York, on the eighteenth day of December, in the year of our Lord one thousand eight hundred and fifty-six, by William Nelson and others against John O. Woodruff and Robert M. Henning, surviving co-partners of James E. Woodruff & Co., in a certain action civil maritime for freight, therein alleged to be due and owing

the said libellants, amounting to $1838.11, with interest, and praying that a citation may issue against the said respondents pursuant to the rules and practice of this Court.

Now, therefore, we do hereby empower, and strictly charge and command you, the said Marshal, as we have before commanded you, that you cite and admonish the said respondents, if they shall be found in your District, that they be and appear before the said District Court on the 10th day of February next, at the City Hall in the city of New York, then and there to answer the said libel, and to make their allegations in that behalf; and have you then and there this writ, with your return thereon.

Witness the Honorable SAMUEL R. BETTS, Judge of said Court, this 28th day of January, in the year of our Lord one thousand eight hundred and fifty-seven, and of our Independence the eighty-first.

GEO. F. BETTS, *Clerk.*

R. GOODMAN, *Proctor for Libellants.*

(Endorsed.)

Vol. 14, No. 19.

United States District Court.

William Nelson, *et als.*
vs.
John O. Woodruff *et al.*

Alias Citation returnable February 10, 1857.

R. GOODMAN,
Proctor for Libellants.

I hereby depute Peter Miller to execute the within process.

ABM. F. HILLYER,
U. S. Marshal.

January 29, 1857.

Filed 10th Februray, 1857.

At a stated term of the District Court of the United States of America for the Southern District of New York, held at the City Hall in the city of New York, on Wednesday, the fourteenth day of January, in the year of our Lord one thousand eight hundred and fifty-seven.

Present—The Honorable SAMUEL R. BETTS, District Judge.

John O. Woodruff and Robert M. Henning,
vs.
William Nelson and another.
} Vol. 14, page 19.

On filing citation with the appearance of the respondents' endorsed, on motion of Messrs. Beebe, Dean and Donohue, Proctors for the respondents, it is ordered that the respondents' appearance

be entered, and that they have until the 20th instant to file and perfect their answer to the libel on file.

(Endorsed.)

14, 19.

U. S. District Court, Southern District of N. Y.

John O. Wodruff *et al.*
vs.
William Nelson *et als.*

BEEBE, DEAN & DONOHUE,
for Respondents.

Order, appearance, &c.
Filed 14th January, 1857.

District Court of the United States for the Southern District of New York.

(Filed the eighteenth day of March, 1857.)

Stipulation

Entered into pursuant to the Rules and Practice of this Court.

Whereas a libel was filed in this Court, on the eighth day of December, in the year of our Lord one thousand eight hundred and fifty-six, by William Nelson and others against John O. Woodruff and others, for the reasons and causes in the said libel mentioned, and praying that a citation may issue against the said respondents and the parties hereto hereby consenting that in case of default or contumacy on the part of the respondents or their surety, execution for the sum of one hundred dollars may issue against their goods, chattels and lands:

And whereas, also, an answer has been filed in said cause by said respondents:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is hereby bound in the sum of one hundred dollars, conditioned that the respondents above named shall pay all costs and expenses which shall be awarded against them by the final decree of this Court, or upon an appeal by the Appellate Court.

JOHN O. WOODRUFF.
per W. R. BEEBE.
W. R. BEEBE.

Taken and acknowledged this 18th day of March, A. D. 1857, before me.

GEO. W. MORTON,
U. S. Commissioner.

Southern District of New York, *ss.:*

Welcome R. Beebe, party to the above stipulation, being duly sworn, doth depose and say that he resides in the city of New York, and that he is worth the sum of two hundred dollars over and above all his just debts and liabilities.

W. R. BEEBE.

Sworn to this 18th day of March, 1857,
before me.

GEO. W. MORTON,
U. S. Commissioner.

Recorded 18th March, 1857.
G. F. BETTS, *Clerk.*

Answer to Libel.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern District of New York.

The answer of John O. Woodruff and Robert M. Henning, surviving co-partners of James E. Woodruff, deceased, composing the late firm of James E. Woodruff & Co., merchants, to the libel and complaint of William Nelson, Edward S. Dennis, Francis Bartlett, Sherburne Sears, and Aaron Cohen. And thereupon the respondents allege and respond as follows:

First.—That they have no knowledge as to the facts stated in the first article of said libel, and therefore deny the same.

Second.—That these respondents admit that in the month of June, one thousand eight hundred and fifty-four, the said ship, Maid of Orleans, was lying in the port of New Orleans, and that while she was so lying, "Kennett Dix & Co." did ship on board the said ship the quantity of lard stated in the second article of the said libel, to be carried and conveyed in and on board thereof from the port of New Orleans to the port of New York, and there to be delivered to the order of the said late firm of James E. Woodruff, of which these respondents were co-partners; but these respondents deny that the said second article truly sets forth the contracts under which the same was shipped, but that such contracts are truly stated and set forth in the Schedules A. and B. annexed to said libel.

Third.—These respondents further admit that the said ship did sail shortly thereafter from the port of New Orleans with the said lard on board, and did safely arrive at said port, and that a part of said lard was delivered to said firm of James E. Woodruff & Co., but these respondents deny that the whole of said lard was delivered to the said firm.

Fourth.—These respondents deny the contents of the fourth article of the said libel, but they admit *that* had the said lard been

delivered in the state and condition set forth in bills of lading annexed to said libel, then the said firm of James E. Woodruff & Co. would have become liable to pay the freight and primage set forth in said article.

Fifth.—These respondents admit the contents of the fifth article of the said libel to be true.

Sixth.—These respondents further admit that the said firm of James E. Woodruff & Co., in the lifetime of the said James E. Woodruff, and these respondents since the decease of the said James E. Woodruff, have refused to pay the said freight and primage, or any part thereof.

Seventh.—These respondents allege that by bills of lading hereinbefore referred to, the libellants, if they were in truth and in fact owners of the said ship, did acknowledge to have received such lard on board the said ship "Maid of Orleans," in good order and well conditioned, and they did therein and thereby agree to deliver the same to the firm of James E. Woodruff & Co., in like good order and condition, dangers of navigation and fire only excepted, and that duplicates of such bills of lading were given to the shippers of the said lard, and were by them forwarded to the said firm of James E. Woodruff & Co., and were by them received, and relying upon which, the said firm made large advances thereon to the said shippers of the said lard, and did receive the same in good faith.

Eighth.—These respondents further allege that the libellants, or their agents, took so little and such bad care of the said lard, in the receiving of the same on board, in the stowing of the same in the transportation and conveyance thereof, in the care and custody thereof, and in its discharge, that a large quantity thereof became and was wholly lost to these respondents, to wit, about sixty thousand pounds, of the value of six thousand dollars, and upwards; and these respondents allege that the said lard was not lost from the perils of the sea, or from fire.

Ninth.—These respondents further allege that from these causes the respondents became and were excused from, and are not liable for the payment of freight or primage. On the contrary, the libellants (if such owners) became indebted and liable to pay to the respondents, as such survivors, a large sum of money, to wit, the sum of six thousand dollars and upwards; and these respondents claim to recoup, as against the said freight and primage, so much of the damages so sustained as shall liquidate and discharge the said freight and primage so claimed by the libellants.

Tenth.—That all and singular the premises are true, and within the jurisdiction of this Honorable Court.

Wherefore these respondents pray that this Honorable Court would be pleased to pronounce against the libel aforesaid, to

decree the recoupment aforesaid, and such other relief as to justice shall seem meet. And also to condemn the libellants in costs.

R. M. HENNING.

Sworn to before me, this 17th day of March, 1857.

[SEAL.] ELIAS DUSENBERRY, *Notary Public.*

BEEBE, DEAN & DONOHUE, *Proctors.*

BEEBE, *Advocate.*

(Endorsed.) 14, 19. U. S. District Court. John O. Woodruff and Robert M. Henning, ads. William Nelson and others. Answer. Beebe, Dean & Donohue, Proctors.

Filed March 18, 1857.

Decree for Libellant, and reference to Commissioner.

At a Stated Term of the District Court of the United States of America, for the Southern District of New York, held at the City Hall, in the City of New York, on Thursday, the twelfth day of March, in the year of our Lord one thousand eight hundred and fifty-seven.

Present—The Honorable SAMUEL R. BETTS, District Judge.

William Nelson *et als.*
vs.
John O. Woodruff and Robert M. Henning, surviving co-partners, &c.

The time to file and perfect the respondent's answer having expired, and no answer having been filed, on motion of R. Goodman, proctor for the libellants, It is ordered, that the default of the respondent in not answering, be and the same is hereby entered.

And on like motion, It is ordered, that it be referred to one of the Commissioners of this Court, to ascertain and compute the amount due the libellants for freight, and to report thereon to this Court with all convenient speed.

(Endorsed.)
14–19—U. S. Dist. Ct., South. Dist of N. Y.

William Nelson, *et als.*,
vs.
John O. Woodruff and Robert M. Henning, &c,

R. GOODMAN, Pro. for Libellants.

Introductory for default and reference.

Filed 12th March, 1859.

Replication.

To the Honorable Samuel R. Betts Judge of the District Court of the United States for the Southern District of New York:

The replication of William Nelson, Edward S. Dennis, Francis Bartlett, Sherburne Sears and Aaron Cohen, libellants, to the answer of John O. Woodruff and Robert M. Henning, surviving co-partners of James E. Woodruff, deceased, composing the late firm of James E. Woodruff & Co., defendants allege that they, the said libellants, will aver, maintain, and prove their libel to be true, certain, and sufficient, and that the answer of the said defendants is uncertain, untrue, and insufficient, and they humbly pray, as in and by their said libel, they have already prayed.

GOODMAN & JESUP,
Proctors for Libellants.

(Endorsed.)
14–19. U. S. District Court.

William Nelson, *et als.*,
vs.
John O. Woodruff and another survivor.

Replication.

GOODMAN & JESUP
Proctors for Libellants.

Filed April 13, 1857.

Extract from Rough Minutes.

U. S. District Court.

William Nelson, *et als.*,
vs.
John O. Woodruff, *et al.*

John O. Woodruff, *et al.*,
vs.
William Nelson, *et als.*

1858, March 9. These causes being called in their order on the calender, ordered hearing.

Pleadings read.

Evidence for libellants and Respondents, Nelson, *et als.:*

See page 15.—John Wright, sworn.

See page 15.—Walter S. Meldrum, sworn.

March 10. These causes being still on hearing, the respondents and libellants, Woodruff, *et al.*, proceed with their testimony.

Evidence for respondents and libellants, Woodruff, *et al.:*

See page 15.—Abraham E. Dubois, sworn.

See page 16.—John C. Redmond, affirmed.

See page 17.—Joseph M. Bensell, "

See page 17.—John H. Wood, "

See page 17.—Elbert A. Dibble, sworn.
See page 18.—Edward Curran, "
See pages 18 and 38.—Deposition of Thomas A. Dix, read.
See pages 18 and 40.— " " Joseph P. Sloan, "
See pages 18 and 42.— " " Thomas Derren, "
See pages 18 and 44.— " " Patrick Murphy, "
See pages 18 and 47.— " " Jacob Mussina, "
See pages 18 and 48.— " " Charles Stanninger, "

Evidence for libellants and respondents, Nelson, *et als.:*

See pages 19 and 27.—Deposition of Edward Shinkle read.
See pages 19 and 28.— " " George Woodley "
See pages 19 and 30.— " " George R. Beard "
See pages 19 and 31.— " " Cohen Sorier "

March 11. These cases being still on hearing, the libellants and respondents, Nelson, *et als.*, proceeded with their testimony.

Evidence for the libellants and respondents, Nelson, *et als.:*

See page 19.—Deposition of Edward P. Dennis read.
See page 19.—John Wright, recalled.
See page 20.—Samuel Caudler, sworn.
See page 20.—Francis S. Genau, "
See page 21.—James H. Yeadon, "
See page 21.—John B. Phillips, "

Evidence for respondents and libellants, Woodruff, *et al.*

See page 21.—George McGrath, sworn.
See page 22.—Fisher A. Fisher, "

Mr. Goodman argues for libellants and respondents, Nelson, *et als.*

These causes being still on hearing, Mr. Goodman continues his argument for the libellants and respondents, Nelson, *et als.*

Mr. Donohue argues for respondents and libell'ts, Woodruff, *et al.*
Mr. Beebe " " " " " "
Mr. Benedict " " libellants and respondents, Nelson, *et als.*

U. S. DISTRICT COURT. TUESDAY, MARCH 9TH, 1858.

William Nelson, *et als.*,
vs.
John O. Woodruff, *et al.*,

GOODMAN & JESUP, for libellants.
BEEBE, DEAN & DONOHUE, for respondents.

John O. Woodruff, *et al.*,
vs.
William Nelson, *et als.*

Cross-suits.
Same counsel.

Pleadings read.
MR. GOODMAN for libellants.

July 11th, 1854. Bills of Lading, Schooner A. Kennett, Dix & Co., to respondents or consignees.

bbls. of lard.
cases "

Same date, 1467 pckgs. lard in both bills.

JOHN WRIGHT, (*sworn.*) In August, 1854, was delivery clerk of Wm. Nelson & Co., agents of ship Maid of Orleans; witness superintendent of ship; one thousand four hundred and sixty-seven packages brought in ship consigned to Woodruff & Co., and delivered to them in this port between 19th and 22d August, 1854.

Cross-examined.—Packages delivered in carts; witness took count of all of them at pier 48 East river or near it; began delivery early in morning, and continued delivery till completed. Witness was stationed on the dock; part of lard was carted to Bedell & Titus, and part to Jeffreys; some shipped and some placed in store house; witness took receipts of delivery. [Produces them.] Vide page .

Witness told Mr. Jeffreys that he had taken four packages not receipted for, but that matter was afterwards arranged, as all charged for had been delivered to Jeffreys.

Ship carried a general cargo: Hides, tobacco, cotton, sugar, wool, &c. [Produces cargo book.]

WALTER S. MELDRUM, (*sworn*) Clerk of libellants in 1854; has bill of freight of above goods $1838 11.

Libellants rest.

WEDNESDAY, MARCH 10TH. *Continued.*

DEFENCE.

ABRAHAM E. DUBOIS, (*sworn.*) Carman since 1840, in a large business; knew ship Maid of Orleans in 1854; superintended carting the lard in question; saw principal part after it was discharged on dock; it leaked very badly whilst landing from ship, and after it was landed on deck; never saw a cargo discharged in so bad a condition before or since; several packages were entirely empty. A day or two after lard was stored in a cellar, witness made a memorandum in writing of its state. He found a good many in cellar entirely empty (eleven.) Also cart took about ten casks empty to cooper's shop, but may not exceed five. (Gives marks of some.) Did not register those casks which had not lost more than one-quarter.

Thinks four coopers were on the deck coopering for Woodruff & Co.; ship had her coopers at work on board; did not see any of them working on the dock; had two spring carts used in

carting the lard and handled it carefully; it was carted by his men, black men.

Cross-examined.—These cartmen were not licensed; recollects seeing four coopers working on deck; lard was rolled up to near head of pier about one hundred yards; where coopering commenced and continued to the ship; all he saw came out of the ship; thinks he was engaged at job three days; the weather was warm, hot, as usual in August, might be called very hot; the memorandum was taken from casks at storehouse, front part of cellar; was then hard enough to enable witness to determine quantity in casks; was three or four days after it was landed. The casks were stored on their bilges in cellar, a few were standing on their heads; saw chimes of one or two casks broken; could not tell whether were shrunk; determined whether lard was out by lifting casks up by hand; did not open any of them, were lifted by laborers in warehouse; does not know whether any lard came out of barrels; it run off them freely whilst carting from ship; does not know whether from ship or not; witness was not then licensed; his compensation was altogether by piece—six cents for barrels, and eight for this cargo, and that is his standing price for like work; thinks he carted lard that summer but cannot say that he hauled any in August of that year brought from New Orleans. The memorandum in pencil mark on paper is in his handwriting.

Re-direct.—Not on board vessel after she went to work; was before; but did not see lard in hold; barrels weigh two hundred to two hundred and fifty pounds; tierces three hundred and fifty to four hundred pounds; observed very little leakage of lard in cellar; seemed to be small stains at places as of one-quarter of a pound; where lard had lain and hardened.

JOHN C. REDMOND, (*sworn.*) Book-keeper for Woodruff & Co., in 1854; recollect the cargo of lard in question, from Kennett, Dix & Co., and John O. Woodruff & Co.; bills of lading were received by mail prior to arrival of ship; the respondents made advances on the bills of lading before arrival of lard. (Invoices produced.) About twenty-eight thousand dollars was advanced on the two consignments; lard then worth nine and one-half to ten and one-quarter cents per pound; about fifty thousand pounds difference between invoice weight and inspector's returns.

The first draft by Kennett, Dix & Co., was drawn on respondent's house direct on account of the shipment; the other was drawn by New Orleans House (of which respondents were part,) was drawn on invoice of lard of that house; both drafts were prior to arrival of ship; the drafts were accepted absolutely and passed to credit of drawers at seventy day; the same as if cash had been paid by respondents.

Cross-examined.—Was in practice of receiving consignments from the two New Orleans concerns on commission.

JOSEPH M. BENSELL, (*sworn.*) Cooper forty years; has coopered frequently, casks of lard imported from New Orleans to New York; coopered this cargo; was present at times whilst work was doing; hoops were loose on casks; condition of cargo was very slack; the worst he ever saw; widely so; had two to four men employed coopering; employed by respondents; worked after landed on dock; did none on the ship; witness work was done after ship's cooper had finished his work; he worked in hold; saw his men on the dock in one or two instances; witness coopered about four hundred casks; cannot say any were entirely empty; but witness found some so jammed and broken that they could not be coopered; thinks casks were of a good quality except being slack, *i. e.,* hoops started; were well-bound iron; should not think there is any quality in oil to injure casks, except it will when liquid tend to shrink the casks; it requires a great deal of care; pressure increases difficulty from heat, *i. e.,* conduces to press open the joints and produce leaking.

Cross-examination.—Thinks heat was one of the causes of injury to cargo, for the lard thus becomes liquid, and endangers leakage. Casks were full wooden bound. Saw on deck leaking out of bilge and at head. Hooped from bilges to head; is full bound. More hurt than good to nail hoops. Produces leaking from nail holes. Ten casks were emptied into others on dock and took them to his shop. Does not know what became of them. The weather was hot at time. Hotter place of storing lard, the less should be the storage. Three or more casks were pressed flat on side.

JOHN WOOD, (*sworn.*) City Weigher fifteen years. Has weighed lard frequently; no particular recollection of any arriving in summer. Has however, weighed some coming in summer, mostly imported in winter. Weighed in store-house, nine hundred or one thousand packages of this cargo. (Puts in his inspection returns. (Returns of Wood, Exhibit 1.) A portion of the cargo leaked largely. Thinks found one hundred and fifty casks very light weight, fifty—one hundred or more lbs., (two hundred lbs., some) short. Did not weigh casks entirely empty. Found some so. They are marked on his return. Casks should weigh two hundred and forty to two hundred and eighty pounds. Tierces run three hundred and twenty pounds, and three hundred and seventy pounds. Not usual to find more than five to ten pounds wantage in casks of lard.

Cross-examined.—Witness weighed lard in November, 1854, in store-house, South street, thinks it was all tierced up in the cellar. Thinks several casks were empty at the time. Don't re-

collect ever before weighing a cargo imported in August. Leakage from loose hoops, (whether from shrinking of staves or otherwise,) might be indifferently from the bilge or head.

Re-direct.—Saw nothing to indicate any great leaking in the store house. Some grease on the floor.

ELBERT E. DIBBLE, (*sworn*). Weigher twelve years. Cartman seven years. Has weighed and handled lard considerably. Knows this ship. Weighed part of the consignment in 1854. (See Returns, Ext. 2.) Weighed some at ship, and some at tobacco inspection, it was in a bad condition. Loss heavy. Greater than he had before known. Should consider two to three per cent. ordinary wastage. Five per cent. higher in summer shipment of lard from N. Orleans. This was much higher than that. Has weighed lard in all seasons of the year.

Cross examined.—Has weighed in August, lard, but cannot say when it arrived. Weighed at warehouses. The wastage would vary according to weather. Means *leakage* by *wastage*. Saw lot imported in a steamer from New Orleans, which came out about as bad as this. Not so much of it. Which came from New Orleans in June, he believes.

All he weighed in this case at ship. It was in a liquid state, like oil. Has often weighed oil in that condition. Barrels twenty-one to twenty-three inches at bilge. Tierces, twenty-three or twenty-four, to twenty-eight inches.

EDWARD CURRAN, (*sworn.*) Cooper twelve years in Bensell's employment, and coopered lard on dock in 1854. Has coopered lard before and since. Considered this lot in bad order. Some casks loose. Some staves broken.

Commission to New Orleans, April 19, 1855.

THOMAS A. DIX, (subject to legal exceptions.)

1. Commission and forwarding business.
2. Shipped lard.
3. Lard to be laden on board evening and morning, to avoid heat of sun.
4. Packages were coopered and were full, and in good order when shipped, and were put on board in cool of day.
6. Some packages remained on Levee some days.
8. Casks in good order when shipped.
10. Weather very warm.

Cross-examined, 3d cross.—In connection with direct interrogatory six.

JOSEPH S. SLOAN.—Produce Broker.

Interrogatory 5.—Effect of sun on lard shipped at New Orleans very injurious.

Interrogatory 9.—Lard shipped early in morning and late in evening.

Interrogatory 10.—Weather usually hotter in July, 1854, than usual. Packages injured by heat of sun on staves.

THOMAS DERNEN.—Cooper.

Interrogatory 3.—Packages in good condition, and seemed to be full.

Interrogatory 4.—Weather very hot in July.

Interrogatory 6.—Hauled to vessel early in morning, and late in the evening.

Interrogatory 7.—Lard expressed on levee from Saturday to Monday, lying in tiers.

Cross-interrogatory 2.—Hoops well secured.

Cross-interrogatory 3.—Lard hauled morning and evening.

Cross-interrogatory 5.—Saw lard lying on levee on Sunday.

PATRICK MURPHY.—Drayman.

Interrogatory 3.—Packages appeared full and in good order, when hauled to ship. Sent by Kennett and Dix.

Interrogatory 6.—In good condition. Hauled early in the morning.

Interrogatory 7.—Packages on levee.

Cross 3d Interrogatory.—Weather very hot.

Cross 5th Interrogatery.—Lard on levee over night.

JACOB MUSSINA.—Produce Broker.

CHARLES STANMEYER.—Cooper.

Interrogatory 13.—Packages well coopered and full, except two wanting, fifty barrels each. Hauled early in morning and late in day.

Defence.

Commission to New Orleans, January 9, 1856.

EDWARD SHINKLE.—Stevedore.

Interrogatory 3.—Stowed the lard evening and morning. Taken on board as soon as taken from drays. Very hot weather.

GEORGE WOODLEY.—Stevedore, (taken same time.)

Interrogatory 6.—Packages greasy and leaky, and partly empty. Weather unusually hot.

GEORGE R. BEARD.—Warehouseman.

Interrogatory 4.—Lard shipped from that warehouse in good order, when shipped.

Cross-examined.—3d Interrogatory.—Packages in good order, except greasy, &c.

COHEN SORIA, Clerk.

Interrogatory 6—Laden with dispatch morning and evening.

THURSDAY, MARCH 11—(*Continued.*)

EDWARD S. DENNIS—Deposition offered by respondents. Objected to for want of compliance with articles of cons. or of any notice to proctors of libellants of filing.

WELCOME R. BEEBE (*sworn.*) Witness arranged by consent with person in office of proctors of respondents, to examine the deponent at 3½ P. M. of 14th instant, in office of witness. Witness requested examination to be postponed, and to be conducted at office of witness at half past 3, P. M. That was never done, and understands deposition was taken *ex-parte* before commissioner.

Cross-examined. Never knew deposition was filed; knew it had been taken.

Ordered, That deposition be read, subject to all legal exceptions, to regularity, &c. (Objection overruled.)

EDWARD P. DENNIS. (Deposition.) Master of vessel.

JOHN WRIGHT (again.) Was present all the time of unloading the ship. Three or four coopers employed on dock. Woodruff & Co. had two. Attended chiefly to casks marked W, with circle, (two hundred and fifty or three hundred.) Those did not go to warehouse, were sold and reshipped on Emerald Isle. Ten empty packages were taken off the dock; those were the only empty ones; they had been started; they were of those marked W, a circle. Contents had been emptied into casks of same mark; one was injured apparently by pressure. Witness examined it carefully; a thin stave appeared to have been pressed in and lapsed; saw no other in that condition. Those casks were removed by a carman not in employ of Nelson & Son. All the oil not sent in Emerald Isle went to Burdet & Curtis's warehouse. The oil was removed from head of pier. Witness was at ship when hatches were opened. Ship had general cargo. Weather was very hot; hold appeared still hotter; steam came out. Witness went between decks to look for a package, but found heat so great could not remain below. There were two coopers belonging to ship, one at gangway and one in hold, attending to discharge of lard; it was discharged rapidly to a warehouse half a block off. The lard was in a liquid state when discharged; saw it run out between the staves. Is still in employment of libellants; they are agents of a New Orleans line, consisting of about twelve ships, with regular sailing days. Casks, except one, were in good order, other than hoops were started in some for purpose of emptying. Does not know that any of the packages were entirely empty; packages were slack; does not call it in very good order. Saw nothing stowed on lard, thinks nothing was; lard formed a sort

of bulkhead up to main hatch from aft; could see upper tier; the casks were tierced up from floor to deck regularly. There was some space between deck or top tier; not wide enough to admit a barrel.

Cross-examined.—Could not see entirely to bottom of tier, but saw two or three tiers down body of lard. Could see to bottom of facing of lard; it was flush on face of lard. There was cargo stowed very near to face of lard; does not know what cargo it was.

Re direct.—Delivered some parcels of lard during summer in small lots, not exceeding one hundred packages at a time.

SAMUEL CANDLER (*sworn*)—Marine Surveyor. Surveyed this cargo in August, 1854. Made seven surveys on cargo, and one on hatch. Saw the lard, it was stowed in after lower hold, in four or five tiers, on bilge and scantling, in ordinary way and best; bilge and bilge not so well. Witness went below; it was very hot there. Barrels looked very fair, but slack, the staves were shrunk. Looked all about alike, top casks looked as well as bottom. Made no note of any barrels being more injured than others. Attributed state to great heat and shrinking of barrels. Surveyed ship; she had appearance of having encountered bad weather, sails, &c. Has surveyed a great many ships laden with lard; this cargo could not have been stowed better. Has surveyed cargoes of lard also in hot summer weather.

Cross-examined.—Supposes his average surveys have been three to five daily. Went on board this ship before her hatches were removed, and made a survey of them. Recollects kind of cargo between decks—tobacco, cotton, wool. Does not recollect he was present when hatches were removed from lower hold; is sure he saw lard removed from lower hold; is sure he saw lard removed from there. Saw no cargo stowed abaft of lard; was there; went down after-hatch, thinks space above lard was large enough to stow another tier. Saw nothing stowed above the lard so as to touch it. Recollects more about this cargo than usual, because there was so much leakage. No distinction between storage of barrels and casks. Was below where packages were discharged. The packages were dunnaged over ballast.

Re-direct.—Made daily, at time of making survey, a memorandum of particulars not now with him.

FRANCIS S. GEREAN, (*sworn*). Coopered this cargo for libellants; was occasionally on board ship whilst cargo was discharging; two coopers under his directions, one at gangway on deck, the other in the hold of ship; witness saw the lard in hold before delivered; the hoops very loose and barrels were leaking from sides and heads; intensely hot below, considerably hotter than on deck; leakage he judges was from shrinking of packages;

the lard was liquid, that tends to shrink staves, and hoops become loose; only chime hoops were nailed; packages were well stowed; does not think it possible to stow better; ground tier was dunnaged as far as he judged; bilges of barrels did not touch; no barrel rested on a single one but on others; been thirty years familiar with stowing cargoes.

Cross-examined.—Has been at sea, 1826; seven, eight or ten years to New Orleans, and once to Havre; never since been mariner; assisted them in stowing vessels thirteen and fourteen years ago; his men coopered tobacco and sugar; coopered about one hundred and fifty packages of lard; worked three days on lard; was at ship first day; they worked on lard; not at other days; was in hold before lard was discharged; other cask goods were stowed near together; not so as to form common bulkheads; no recollect of dunnage except under ground tier.

Re-direct.—Not aware of dunnaging above ground tier, nor between.

Re-cross examined.—Pressure will tend to increase leak of lard liquified; wishes to state that he regards *bilge and cantling* to be the same that Mr. Yeadon to be *bilge and header.*

JAMES H. YEADON, (expert,) (*sworn*).—Never saw cargo; been stevedore sixteen or seventeen years; accustomed to load and discharge lard shipped from Southern ports; this cargo was well stowed; could not have been better in ship carrying other freight; according to description given by Capt. Candler, four or five tiers not too high.

Cross examinined.—Bilge and bilge bad stowage with middle dunnage, so also, when bilge and cantling stowed; dunnage is used under chime or in liquor barrels, or lard brought in liquid state, (describes bilge and bilge, and bilge and header, and bilge and cantling.)

Re-direct.—Ground floor requires dunnage and upper tiers; some in upper tiers, but not so much; by many, all the methods are termed indifferently *bilge and header,* and *bilge and cantling.*

Re-cross examined.—Hoops are always dunnaged in stowing.

JOHN B. PHILLIPS, (expert,) (*sworn.*)—Stevedore eleven or twelve years; lard is considered liquid goods and is stowed by itself in ship, and is stowed *bilge and cantling,* and *bilge and bilge, bilge and header;* you cannot stow bilge and headers very well unless vessel is filled full; *bilge and half bilge* is a good way, but consumes room.

Cross-examined.—Does not dunnage *bilge and header* must chock or dunnage in stowing *bilge and cantling?*

For Respondents.

GEORGE MCGRATH, (*sworn*).—Deals in lard, buyer and seller

and refiner; in November, 1854, witness sold fifteen hundred barrels as a broker of that cargo, as he understood in warehouse; the packages were ordinary Western lard pigs; some not full; if packages good, like these, there ought to be not more than five per cent. for leakage in hot weather and in liquid state; but more pressure the more leakage; lard in hot weather is kept in cellars, and he considers three tiers as high as prudent, as it tends to break the casks; the loss in this lot was fifty per cent. larger than he ever knew; has seen a great many lots.

Cross-examined.—No personal knowlege that this was libellants; the lard was in hard state when he first saw; has seen lard in liquid state, not as if melted by fire; made so by heat in holds of ship.

This was fair lard, not prime all of it, but a good average lot; supposes method of storage to be same in warehouse as on ship; wastage of five per cent., he speaks of, is of oil coming in here in summer seasons and very hot weather, and sold on deck as it comes out of ships from New Orleans.

FISHER A. FISHER, (*sworn,*) dealer in lard, grease, and tallow. Has dealt very largely in oil for several years; has received it all temperatures of weather. Lard brought in vessels in hot weather will naturally leak *ten* pounds out of a package; not usual to have wastage over *five* pounds per barrel, (difference of weight of barrel and cask about seventy-five pounds); stores lard in cellar; three to five tiers; lard of reasonable quality, in a good package, will leak only about the same as oil; no reason for any greater wastage; does not think putting liquid lard into barrels would tend to produce leakage, not so much as pressure of barrel upon each other, in barrels stored five or six tiers high; calculate no loss in winter, and in hot weather not to exceed five or ten pounds to package; a barrel filled full of cold oil will leak more or less in liquifying in the barrel; the fuller the barrel, and greater the heat melting the lard, the greater will be the leakage, owing to pressure on staves.

Exhibit No. 3—Ship's Register.

Mr. Goodman argues the cause for libellants.
Mr. Donohue argues the cause for respondents.
Mr. Beebe argues for the cause for respondents.
Mr. Benedict argues the cause for libellants.

Cur. adv. vult.

N. Y. Common Pleas.

Interrogatories to be administered to Edward Schinkle, George Woodley, George R. Beard, and Cohen Soria, witnesses to be produced, sworn, and examined on behalf of the plaintiffs in this

action, now pending in the Court of Common Pleas in and for the city and county of New York, wherein William Nelson and others are plaintiffs and James E. Woodruff and others are defendants, before C. B. Singleton, a commissioner under and by virtue of a commission hereto annexed.

First Interrogatory.—What is your name, age, and occupation, and where do you reside?

Second Interrogatory.—Do you know the parties to this suit, and which of them?

Third Interrogatory (to all except Mr. Beard and Mr. Soria.)—Do you know the ship "Maid of Orleans," and were you in July, or at any time, in the summer of 1854, and at what time, employed about or cognizant of any packages of lard being shipped on board of her for her voyage to New York? If yea, state the quantity of lard, number of packages, &c., when and how taken on board, its condition, and all the particulars attending the shipment, and putting on board the vessel.

Fourth Interrogatory.—For whom was the lard shipped, and by whom?

Fifth Interrogatory (addressed to Messrs. Beard and Soria.)—What connection had you with the said lard? To whom and by whom was it shipped? Where was it before shipment? What was the condition of it at that time? How was the temperature at New Orleans in July, 1854? How, as compared with other seasons? What is the usual condition of lard in the summer season?

Sixth Interrogatory (to all the witnesses.)—Do you know of any other matter, or thing, touching the matters and things inquired of, that may tend to the benefit or advantage of the plaintiffs herein? and if yea, state the same fully and at large, as if you had been particularly interrogated thereto.

R. GOODMAN, *Plaintiffs' Attorney.*

The foregoing direct interrogatories are hereby settled by consent.

R. GOODMAN, *For Plaintiffs.*
DUSENBERRY & VAN WAGENEN,
For Defendant.

(Endorsed.)
New York Common Pleas:

William Nelson and others,
agt.
James E. Woodruff and others.

Interrogatories and notice.

Please take notice that the interrogatories, of which within is a copy, will be presented for settlement to one of the Judges of this

Court at Chambers thereof at the City Hall, in the city of New York, on the 22d of December inst., at 10 A. M. of that day.

Yours, &c.,

R. GOODMAN, *for Plaintiffs.*

To DUSENBERRY & VAN WAGENEN, Esqrs., *for Defendants.*

New York Common Pleas.

Cross interrogatories to be administered to Edward Schinkle, George Woodley, George R. Beard and Cohen Soria, witnesses to be produced, sworn and examined on behalf of the plaintiffs in this action, now pending in the Court of Common Pleas, in and for the city and county of New York, wherein William Nelson and others are plaintiffs, and James E. Woodruff, et al., defendants, by way of cross-examination.

First Cross-Interrogatory. (To all except Beard and Soria.)—If in answer to the third direct interrogatory you answer, that you were employed about or cognizant of any packages of lard being shipped on board the "Maid of Orleans," on the voyage referred to, state who employed you and how you know that the lard was shipped? What marks were on those packages? Whether you were present when it was taken on board? Did you make at the time any examination of the packages, or any memorandum of what you have stated in relation to said shipment and the manner in which it was made, and the condition, and number, and marks of the packages of lard? State how long you have been in the employ or connection with those who employed you in relation to this shipment of *lard?* Was there anything in connection with this shipment which caused you to remember distinctly the matters which you have stated, or is your recollection imperfect?

Second Cross-Interrogatory.—How do you know for whom the lard was shipped? State your means of knowledge.

Third Cross-Interrogatory. (Addressed to Beard and Soria.)—What connection in business have you with the plaintiffs in this suit, or the agents of the Maid of Orleans, and how long have you been so employed? State how you knew the condition of the lard before shipment, and where it was before it was shipped? Did you examine the lard or the packages at the time you saw them before shipment? Were they opened? If yea, state how many were opened and how particularly you examined them? What were the marks upon them?

Fourth Cross-Interrogatory. (To all the witnesses.)—Do you know any other matter or thing of benefit or advantage to the defendants? if yea, state particularly.

DUSENBERRY & VAN WAGENEN,
Defendants' Attorneys.

I consent to the settlement of the cross-interrogatories herein as above.

R. GOODMAN, *Plaintiffs' Attorney.*

The people of the State of New York, to Charles B. Singleton, Esq.

Know ye, That we, with full faith in your prudence and competency, have appointed you commissioner, and by these presents do authorize you to examine George R. Beard, Edward Schinkle, George Woodley and Cohen Soria, as witnesses in a cause pending in the Court of Common pleas, for the city and county of New York, wherein William Nelson, Edward S. Dennis, Francis Burnett, Sherburne Sears and Aaron Cohen are plaintiffs, and James E. Woodruff, John O. Woodruff and Robert R. Henning are defendants, on the part of the plaintiffs on oath, upon the interrogatories annexed to this commission, and to take and certify the depositions of the witnesses and return the same according to the directions hereunto annexed.

Witness, J. P. Ingraham, Esq., first judge of said Court of Common Pleas, at the City Hall, in the city of New York, the 26th day of December, one thousand eight hundred and fifty-five.

BENJ. H. JARVIS,
Clerk of Common Pleas.

R. GOODMAN, *Plaintiffs' Attorney.*

Direction for Executing the Commission.

The person to whom such commission shall be directed, or any one of them, unless otherwise expressly directed therein, shall execute the same as follows:

1. They, or any one of them, shall publicly administer an oath to the witnesses named in the commission, that the answer given by such witnesses to the interrogatories proposed to them, shall be the truth, the whole truth, and nothing but the truth.

2. They shall cause the examination of each witness to be reduced to writing, and to be subscribed by him and certified by such of the commissioners as are present at the taking of the same.

3. If any exhibits are produced and proved before them, they shall be annexed to the depositions to which they relate, and shall in like manner be subscribed by the witness proving the same, and shall be certified by the commissioners.

4. The commissioners shall subscribe their names to each sheet of the depositions taken by them; they shall annex all the depositions and exhibits of the commission, upon which their return shall be endorsed; and they shall close them up under their seals, and shall address the same, when so closed, to the clerk of the court from which the commission issued, or to the clerk of the county in which the venue shall be laid, as shall have been directed on the commission, at his place of residence.

5. If there is a direction on the commission to return the same

by mail, they shall immediately deposit the packet, so directed, in the nearest post office.

6. If there be a direction on the commission to return the same by an agent of the party who sued out the same, the packet so directed shall be delivered to such agent.

The above is an extract from the Revised Statutes of the State of New York, (4th Ed.) vol. 2, page 639, relating to the taking of testimony out of the State.

This commission, when executed, is to be returned to the Clerk of the Court of Common Pleas, in and for the city and county of New York, care of R. Goodman, Esq., New York city.

The execution of this commission appears in certain schedules hereunto annexed.

CHARLES B. SINGLETON, *Com'r.*

Instructions to Commissioners.

Annexed to the commission is an extract from the Statutes of the State of New York, relative to the taking of testimony out of the State, which extract is directed by law to be annexed to the Commission. But as it does not comprise everything necessary to be attended to by the Commissioners, they are requested to observe the following more ample Instructions:

I. All the Commissioners named in the Commission, should have notice of the time and place of executing it; and if any of them do not act, let the fact that they were notified, or could not be notified, and the reasons for their not acting, be stated.

II. The Commission must be executed by the Commissioner named therein.

III. The acting Commissioner will examine the witnesses separately, after publicly administering to them the following oath or affirmation:

"You do swear, that the answers which shall be given by you to the interrogatories proposed to you, shall be the truth, the whole truth, and nothing but the truth. So help you God."

The oath shall be administered (except in cases hereinafter mentioned) by the witness laying his hand upon, and kissing the Gospels.

But if the witness shall desire it, he shall be permitted to swear in the following form: "You do swear in the presence of the ever living God," and while so swearing, he may or may not hold up his hand, in his discretion.

Or if the witness shall declare that he has conscientious scruples against taking an oath, or swearing in any form, he shall be permitted to make his affirmation in the following form: "You do solemnly, sincerely, and truly declare and affirm," omitting the words, "So help you God."

IV. The general style or title of the depositions must be drawn up in the following manner:

"Deposition of witnesses, produced, sworn (or affirmed) and examined, the day of in the year one thousand eight hundred and at under and by virtue of a Commission issued out of the in a certain cause therein depending and at issue between defendant as follows:

A. B. of (insert his place of residence and occupation) aged years and upwards, being duly and publicly sworn (or affirmed) pursuant to the directions hereto annexed, and examined on the part of the doth depose and say as follows: First—To the first interrogatory, he saith, &c. [Insert the witness' answer.] Second—To the second interrogatory he saith, &c., and so on throughout.

If he cannot answer, let him say that he knoweth not.

V. If there be any cross-interrogatories, the witness will go on thus:

First—To the first cross-interrogatory, he saith, &c., and so on throughout.

VI. When the witness has finished his deposition, let him subscribe it, and the acting Commissioner will certify as follows:

Examination taken, reduced to writing, and by the witness subscribed and sworn to this day of 18 before

Commissioner.

VII. If any papers or exhibits are produced and proved, they must be annexed to the depositions in which they are referred to, and be subscribed by the witness, and be endorsed by the acting Commissioners, in this manner:

"At the execution of a Commission for the examination of witnesses, between defendant this paper writing was produced and shown to (insert the witness' name) and by him deposed unto at the time of his examination, before

Commissioner.

VIII. The acting Commissioners will sign their names to each half sheet of the depositions and exhibits.

IX. If an interpreter is employed, one of the Commissioners will administer to him the following oath, and certify thereto:

"You do solemnly swear, that you will truly and faithfully interpret the oath and interrogatories to be administered to a witness now to be examined, out of the English language into the language, and that you will truly and faithfully interpret the answers of the said thereto, out of the into the English language."

Let the depositions be subscribed by the interpreter as well as by witness, and certified by the acting Commissioners, as follows:

Examination taken, reduced to writing, subscribed by the witness and by the sworn interpreter, and sworn to by the witness, this day of 18 before

Commissioner.

X. The Commissioner will make return on the back of the Commission by endorsement, thus:

"The execution of this Commission appears in certain schedules hereunto annexed."

Commissioner.

XI. The depositions and exhibits (if any) must be annexed to the Commission, and then the Commission, the directions, the interrogatories, cross-interrogatories, depositions and exhibits, must be folded into a packet and bound with tape. The acting Commissioners are to set their seals at the several meetings or crossings of the tape, endorse their names on the outside, and direct it thus:

To Clerk of the Court of Common Pleas in and for the city and county of New York, New York city, care of R. Goodman, Esq.

XII. When the Commission is thus executed, made up and directed, it must be returned in the manner specified in the direction of the Commission, if there be any.

XIII. If there be no direction on the Commission specifying the manner in which it is to be returned, then it must either be delivered to the Court by one of the acting Commissioners personally, or else be forwarded by some person coming to this place, and who must be liable, on his arrival, to make oath, before one of the Judges or the Clerk of the Court:

"That he received the same from the hands of A. B., one of the Commissioners, and that it had not been opened or altered since he so received it."

XIV. In case of returning the Commission by mail, it is to be deposited by one of the acting Commissioners in the nearest post-office, he making the following endorsement thereon:

"Deposited in the post-office, at
this day of 18 , by me,
Commissioner."

In case of returning the Commission by a vessel, it is to be deposited by one of the acting Commissioners in the letter bag of such vessel, he making upon the Commission the following endorsement:

"Deposited in the letter bag of the
now lying at and bound for the
port of New York, this day of
18 , by me,
Commissioner

The Commissioners are requested to be very careful to observe the foregoing instructions, as the smallest variance may vitiate the execution of the Commission.

If the Commission be returned by an agent, let him be instructed to call, on his arrival at this place, upon who will direct him as to its delivery.

DEPOSITIONS OF WITNESSES, produced, sworn and examined, the 9th day of January, in the year one thousand eight hundred and fifty-six, at my office, the undersigned commissioner, No. 78, on Camp street, in the building situate on the corner of Camp and Natchez streets, in the City of New Orleans, Louisiana, under and by virtue of a commission issued out of the Court of Common Pleas, for the City and County of New York, hereto annexed in a certain cause therein depending, and at issue between William Nelson, Edward S. Dennis, Francis Bunell, Sherburne Sears and Aaron Cohen, plaintiffs, and James E. Woodruff, John O. Woodruff and Robert M. Henning defendants, as follows:

EDWARD SCHINKLE, a resident of the aforesaid City of New Orleans, aged forty-eight years and upwards, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the plaintiffs, doth depose and say as follows:

1st.—To the first interrogatory, he saith: His name is Edward Schinkle, and his occupation is that of a stevedore, and he is about forty-nine years old, and he resides in the City of New Orleans, Louisiana.

2d.—To the second interrogatory, he saith: He only knows Aaron Cohen, Edward S. Dennis and Sherburne Sears.

3d. To the third interrogatory, he saith: He knows the ship Maid of New Orleans, and he was employed in July, 1854, as stevedore in loading the said vessel, and he knows that a large quantity of lard was shipped on her in that month, for the voyage to New York from this port. As stevedore he had this lard put on board said vessel; he thinks there were about fourteen hundred barrels and tierces, there might be more, he is not certain as to the exact quantity. This lard was taken on board said vessel in evening and morning as fast as it could go down the hatchway. The packages containing said lard, were very greasy when the same were taken on board said vessels. This lard was properly and carefully handled by those employed by him, to take it on board the said vessel. This lard was promptly taken on board, as soon as it came off the drays—it was not exposed to the sun. There was about fifteen or twenty barrels of this lard leaking, which he caused to be rolled to one side and put under tarpaulins to be coopered; and as soon as it was coopered by the shipper's employees, it was taken on board. This lard appeared to be in a liquid state, which he discovered by rolling the barrels, and also from that which came out of the leaking packages.

4th.—To the fourth interrogatory, he saith: He knoweth not.

6th.—To the sixth interrogatory, he saith: This lard was stored in the after end of the ship, by itself, and further he saith not, except that he thinks this lard was stored in the best place for it in

the ship, and that at the time it was taken on board, the weather was hotter than he had ever known it during a residence of twenty-five years in this city; and that he was present during the whole time this lard was being taken on board.

First Cross-Interrogatory.—To the first cross-interrogatory, he saith: He was employed by the master of the vessel, as stevedore, to load the vessel. He knows the lard was shipped, because he saw it put on board the vessel; he cannot tell what were the marks on the packages. He says he was present when all of it was taken on board. He did not at the time make any examination of the packages, except as he noticed them while being rolled on board, and those fifteen or twenty leaking, which he spoke of in his direct examination, or answers to the direct interrogatories. He made no memorandum of what he has stated in relation to said shipment, and the manner in which it was made, and the condition and marks of said packages of lard; but he made a memorandum of the number by which he was paid for the stowage of the vessel. He has been employed by the master of said vessel about two or three years, as stevedore, during which time he has been master of said vessel; there was no matter or thing in connection with the shipment of this lard, which caused him to remember distinctly the matters which he has stated, but his recollection of what he has stated is nevertheless clear and distinct.

Second Cross-Interrogatory.—To the second cross-interrogatory, he saith: He does not know for whom the lard was shipped, and has stated nothing to that point.

Fourth Cross-Interrogatory.—To the fourth cross-interrogatory, he saith: He knows nothing, not already stated, that would be of any benefit to the defendants, and further he saith not.

EDWARD SCHINKLE.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this the 9th day of January, 1856, before me, the undersigned Commissioner,

CHARLES B. SINGLETON.
Commissioner.

And also at the same time and place appeared before me, GEORGE WOODLEY, a resident of the city of New Orleans, Louisiana, aged about thirty-seven years, and upwards, being duly and publicly *sworn*, pursuant to the directions hereto annexed, and examined on the part of the plaintiffs, doth depose and say as follows:

1st. To the first interrogatory, he saith: His name is George Woodley; age, upwards of thirty-seven years; occupation, is foreman for a stevedore, and he now resides in the said city of New Orleans, Louisiana.

2d. To the second interrogatory, he saith: He knows Aaron Cohen, S. Sears, E. S. Dennis, and John O. Woodruff, by sight, and none of the others does he know, even by sight.

3d. To the third interrogatory, he saith: He knows the ship Maid of Orleans. He was employed as foreman of the stevedore's men, in July, 1854, while said vessel was being loaded, and he recollects the lard going into said vessel; this was the voyage from this city (New Orleans) to New York. He says there were from one thousand to fifteen hundred packages of lard taken on board said vessel for said voyage. These packages were taken on board said vessel in the month of July, 1854, as already stated. It was taken on board in the usual way, as soon as it was rolled off the drays. Some of this lard was very greasy and dirty; some of the packages were leaking, and some of the packages half out; all of it was more or less dirty and greasy. The stage on which it was rolled to the vessel was saturated with grease, proceeding from the packages. He thinks he saw some twenty or twenty-five packages which appeared to he half out; he was notified of this fact by the men who were employed in putting it on board the vessel. All this lard appeared to be more or less liquid, which he ascertained by handling the packages. This lard was properly and carefully handled and stored. It was all stowed in the after end of the ship, by itself; there was nothing on the top of it.

Fourth. To the fourth interogatory he saith, He knoweth not.

Sixth. To the sixth interrogatory, he saith, While this lard was being shipped the weather was unusually hot; the lard, after it was taken to the shop, was not exposed to the sun. He was very much annoyed by the captain of the vessel who was urging him to get it on board and not let it be exposed to the sun, as there were a few barrels that could not be taken on board immediately, when the dray would bring down as much as thirty or forty barrels at a time. He was annoyed by the master because he was taking the lard on board as fast as it could go down the ship's hatchway—not more than fifteen minutes were necessary to *take in* thirty or forty barrels of lard.

First Cross-Interrogatory. To the first cross-interrogatory, he saith: He was employed by Mr. Schinkle, the preceding witness, and the lard was shipped because he saw it taken on board the ship. He cannot say what marks were upon the packages, because he took no notice of them. He was present part of the time while it was being taken on board. He did not make any memorandum of what he had stated. He made an examination of the packages in order to ascertain their condition, and when he found any which needed coopering, he had them put aside for that purpose. He has been in the employ of Mr. Schinkle five years and is still in his service as foreman. He says there is no matter or thing in connection with this shipment which causes him

to remember distinctly the matters which he has stated except the trouble he had with it. He recollects distinctly what he has stated.

Second Cross-Interrogatory. To the second cross interrogatory he saith, he knoweth not.

Fourth Cross-Interrogatory. To the fourth cross-interrogatory he saith, he knoweth not, and further deponent saith not.

GEORGE WOODLEY.

Examination taken, reduced to writing, and by the witness sworn and subscribed to, this the 9th day of January, 1856, before me

CHARLES B. SINGLETON, *Commissioner.*

And also on this the 14th day of January, 1856, at the same place, appeared before me, the undersigned Commissioner, George R. Beard, a resident of the city of New Orleans, Louisiana, aged upwards of thirty eight years of age, being duly and publicly sworn pursuant to the directions here o annexed, and examined on the part of the plaintiffs, doth depose and say as follows:

First. To the first interrogatory he saith, his age is forty years; occupation, a warehouse keeper, and he resides in the city of New Orleans, Louisiana.

Second. To the second interrogatory, he saith: he knows Nelson Sears, John O. Woodruff, and Aaron Cohen, but does not know the others.

Fourth. To the fourth intorrogatory, he saith: the lard was shipped from the warehouses of George R. Beard & Co., of which firm deponent was a member. It was shipped by Kennett, Dix & Co., of this city. He does not know from whom it was shipped, and he does not know to whom it was shipped.

Fifth. To the fifth interrogatory, he saith: the lard was stored with the firm of George R. Beard & Co., of which he was a member. Does not know to whom it was shipped. It was shipped by Kennett, Dix & Co., as already stated. The lard before shipment was in our warehouse, where it had been stored from fifteen to forty days, the lard, at the time of shipment, was in apparently good order, as all of it had been coopered before it was shipped. The weather was very warm, in July, 1854, in this city. The weather was much warmer in 1854 than previous seasons. The condition of lard in the summer season depends on the quality, some lard will keep hard during the entire summer if kept in a proper place; inferior lard will run very much; superior lard will not waste or leak much if kept in a proper place, all lard, in the summer time, will lose more or less. He does not know the quality of the lard above alluded to.

Sixth. To the Sixth Interrogatory, he saith: At the time this lard was in our store, there was about seven or eight thousand

packages of lard in our warehouses, from which there was considerable leakage, but he cannot say that it came from this lot of lard; warm weather affects lard injuriously when being shipped from one port to another.

Second Cross-Interrogatory. To the second cross-interrogatory he saith: He says he knows the lard was shipped by Kennett, Dix & Co., because they were the parties who stored it with his firm aforesaid.

Third Cross-Interrogatory. To the third cross interrogatory he saith: He has no connection in business with any of the parties or their agents, and has had none. He knows all he has stated concerning its condition, because it was in his warehouses and shipped from there. He examined the packages before shipment, but did not examine the lard itself. The packages seemed to be in good order except being greasy as all lard packages are at that season of the year. He thinks the packages were not opened; there were four different marks on the lard, viz., B. & P. LEMP, or Lemp, M. & C. and H., these are the marks by which we received them but he cannot say that they were shipped by the same marks.

Fourth Cross-Interrogatory. To the fourth cross-interrogatory he saith: He knoweth not.

GEO. R. BEARD.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this, the 4th day of January, 1856, before me.

CHARLES B. SINGLETON,
Commissioner.

And also, on this the 15th day January, 1856, at the same place mentioned in the caption of this testimony appeared before me, the undersigned, Commissioner, Cohen Soria, a resident of the City of New Orleans, Louisiana, aged upwards of twenty-five years, who being duly and publicly sworn pursuant to the directions hereto annexed and examined on the part of the plaintiffs, doth depose and say as follows:

First. To the first interrogatory he saith: His name is Cohen Soria, occupation, Clerk, age, twenty-five years, and resides in the City of New Orleans, Louisana.

Second. To the second interrogatory he saith: He knows all the parties to this suit except Jas. E. Woodruff, Francis Burnett and Robt. N. Henning.

Fourth. To the fourth interrogatory he saith: He made the contract for the shipment of said lard from this Port to New York; he acted for the agents of the ship "Maid or Orleans," in making said contract. The lard was shipped by Kennett, Dix & Co.,

that is one lot and consigned to Woodruff & Co., New York. Another lot at the same time and on the same vessel was shipped by John O. Woodruff & Co., and consigned to the same parties. Part of the lard was, previous to shipment, in the warehouses of Geo. R. Beard & Co., that is the lot of Kennett, Dix & Co. He does not know where the other was stowed or shipped from; he does not know what its condition was at the time of shipment or previous thereto; the weather was very warm in New Orleans in July, 1854; it (the weather) was much warmer than during other seasons; he does not know what the usual condition of lard is in the summer season, because he has never dealt in lard and has never had occasion to notice it.

Sixth.—To the sixth interrogatory he saith:—He was frequently at the ship while she was loading for this voyage, and he knows the lard went down evening and morning, and was put on board with despatch, and was not exposed to the heat of the sun, and further he knoweth not.

Second Cross-Interrogatory. To the second cross-interrogatory, he saith: He knows for whom the land was shipped from the face of the bill of lading.

Third Cross-Interrogatory. To the third cross-interrogatory he saith: He was clerk for the Agent of the ship Maid of Orleans, and had been in his employ for nine or ten years, and is still in his employ. His name is Aaron Cohen. He did not know what the condition of the lard was before shipment, but he knows one lot was stored in the warehouses of Geo. R. Beard & Co., because he was so informed by Geo. R. Beard. He never saw the lard before the same was taken to the said ship. He saw the lard at the ship when taken there for the purpose of being taken on board. He did not examine the lard, except so far as to discover that the outside of the packages looked greasy, this he discovered in passing, and casually looking at the lard. The packages were not to his knowledge opened. He did not notice the marks particularly; and, if he ever knew them, he has forgotten them.

Fourth Cross-Interrogatory. To the fourth cross-interrogatory he saith: He knoweth not.

COHEN SORIA.

Examination taken and reduced to writing, and by the witness subscribed and sworn to, this the 15th day of January, 1856, before me.

CHARLES B. SINGLETON,
Commissioner.

I, Charles B. Singleton, the undersigned Commissioner, do hereby certify, that I caused Edward Schinkel, George Woodley, George R. Beard, and Cohen Soria, witnesses in the annexed commission, named to appear at my office in the building numbered

78, Camp street, located on the corner of Camp and Natchez streets, in the City of New Orleans, on the days named in the caption to the testimony of each witness; and after publicly administering to each of said witnesses the oath required in the directions accompanying the Commission hereto annexed, conclude in the following words:—"You do swear, that the answers which shall "be given by you to the interrogatories propounded you, shall be "the truth, the whole truth, and nothing but the truth, so help you "God." The said oath was administered to each of said witnesses, by each laying his hand upon and kissing the Gospels. That I then proceeded to examine each witness separate and apart from every person, by reading in a clear and distinct manner each interrogatory, and cross-interrogatory, *and cross-interrogatory*, to each witness, and his answer thereto. I immediately in his presence, and without turning aside to anything else, reduced to writing, with my own hand. And after the answers were thus reduced to writing, I read the same in a clear and audible voice to each witness, who agreed to the same as being the true and correct answers given by him, and taken down by me as aforesaid. And I caused each of said witnesses to sign with his own hand, his answers thus given. I then made up the testimony annexed, the same to the accompanying commission, directions and interrogatories, and cross-interrogatories, preparatory to sending the same thus made up by mail to the Court from whence said Commission issued, in pursuance to the directions thereto annexed.

In witness whereof I have hereunto set my hand and seal, this the 15th day of January, 1856.

CHARLES B. SINGLETON, [SEAL.]
Commissioner.

(Endorsed.)

Woodruff *vs.* Nelson, *et al.* Testimony for plaintiffs on Commission.

R. GOODMAN.

Interrogatories, to be administered to Charles Stanmeyer, Thos. Dennan, and Patrick Murphy, witnesses to be produced, sworn and examined on behalf of James E. Woodruff and others, defendants in a certain suit now pending in the Court of Common Pleas in and for the City, County, and State of New York, before the Judges thereof, at the suit of William Nelson and others, plaintiffs, before C. B. Singleton, Commissioner, under and by virtue of a commission hereto annexed.

First Interrogatory—What is your name, age, and occupation, and where do you reside?

Second Interrogatory—Do you know the parties to this suit; if yea, how long have you known them?

Third Interrogatory—Do you know the ship Maid of Orleans, and were you employed to cooper any barrels or tierces of lard

that were shipped on board said ship, in the month of July, 1854, by whom were you employed, at what time, in what condition were the said packages at the time, how were they coopered by you if coopered at all, and were said packages full or not at that time? State fully and particularly.

Fourth Interrogatory—Was the weather at that time, July, 1854, very warm or otherwise, and at what time in the day was said lard handled or moved?

Fifth Interrogatory—Were you in the month of July, 1854, employed in hauling or draying a lot of lard in barrels and tierces to the ship Maid of Orleans, then lying at the city of New Orleans, and referred to in this suit? If yea, state by whom you were employed, what amount of lard was drayed, and by whom were you assisted in the work. State fully and particularly.

Sixth Interrogatory—What was the condition of these barrels and tierces at the time they were removed or handled by you, and at what time of the day the same were hauled to the vessel, whether morning or afternoon, or both, and how long a time each day were you so occupied in hauling them, and where were they left when taken from the drays? State fully and particularly.

Seventh Interrogatory—Do you know what was done with said packages of lard when taken to the vessel by the drays? If you say you do, then state whether they were immediately taken on board the ship Maid of Orleans or not, and if not, how long did they remain on the levee before they were placed on board the ship? State fully and particularly all that you know in answer to the question.

Eighth Interrogatory—Do you know who stowed away this lard on board the ship Maid of Orleans; if yea, state by whom it was done, how long a time was occupied in stowing the same, in what manner it was done, whether in tiers or not, and how dunnaged? State fully and particularly your knowledge of the matters herein referred to.

Ninth Interrogatory—Do you know any other matter or thing touching the matters in question, that may tend to the benefit or advantage of the defendants? If yea, declare fully and at large, as if you had been particularly interrogated thereto

To Thomas Dix,
Joseph Sloan,
Jacob Mussina.

First Interrogatory—What is your name, age, and business, and where is your said business located, where do you work?

Second Interrogatory—Do you know the defendants in this suit; if yea, how long have you known them, and did you at any time in the month of July, 1854, ship on board the ship Maid of Orleans, consigned to the defendants, any lard? And if yea,

state the time of such shipment, and the number of packages so shipped.

Third Interrogatory—Did you make the freight engagement or contract for the shipment of said lard? If yea, state what were the terms and conditions thereof. State fully and particularly, and state with whom the contract was made.

Fourth Interrogatory.—Do you know what was the condition of the packages, containing the said lard, when delivered to the Maid of Orleans at the time of said delivery? At what time of the day were said packages delivered upon the levee, and whether or not said packages were full when delivered on the levee?

Fifth Interrogatory.—For how long a period of time, and how extensively have you been engaged in buying, selling, and shipping lard, and what effect does the heat of the sun in your climate in the month of July have upon packages of lard exposed in the open air to the rays of the sun during the day?

Sixth Interrogatory.—Do you know whether the packages of lard, shipped by the Maid of Orleans, were taken on board the ship as soon as hauled upon the levee? and if you answer that they were not so taken on board, state how long they remained on the levee after they were delivered there before being taken on board, and what quantity was exposed to the sun by reason of not being immediately put on board the vessel. State fully and particularly your knowledge, and means of knowledge, in answer to this question.

Seventh Interrogatory.—Were the packages of lard coopered previous to their shipment? If yea, state by whom it was done, and in what manner it was done.

Eighth Interrogatory.—Do you know in what part of the Maid of Orleans the said lard was stowed, and in what manner, and by whom, it was stored? whether it was tiered? and if so, how high it was tiered?

Ninth Interrogatory.—Do you know what is the custom in the city of New Orleans during the warm season in shipping lard, as to the parts of the day in which it is done? If there is any custom, whether it is taken on board the vessel immediately upon its delivery on the levee to avoid exposure to the sun? State fully and particularly.

Tenth Interrogatory.—What was the state of the weather in July, 1854, in New Orleans as to heat? State fully and particularly.

Eleventh Interrogatory.—Do you know any other matter, or thing, touching the matters in question that may tend to the benefit or advantage of the defendants herein? If yea, declare fully and at large, as if you had been particularly interrogated thereto.

New York Common Pleas.

Cross-interrogatories to be administered to Charles Stanmeyer Thomas Dennan, and Patrick Murphy, witnesses for the defendants, by way of cross-examination, in a suit in the Court of Common Pleas in and for the city and county of New York, in which William Nelson and others are plaintiffs and James E. Woodruff and others are defendants, before C. B. Singleton, Commissioner.

First Cross-Interrogatory.—In what way are you connected with, or related to, the defendants in this suit, or either of them, or were you at the time of the matters inquired of?

Second Cross-Interrogatory.—How many barrels or tierces did you cooper, and when? In what place did you cooper the same? What were the materials with which you coopered? How long have you been in the business of coopering?

Third Cross-Interrogatory.—What are your means of knowledge of the matter in July, 1854? How do you recollect the day, or time of day, the lard was hauled?

Fourth Cross-Interrogatory.—How do you know the condition of the barrels or tierces, as inquired of in the sixth direct interrogatory, or of the time of day the same were hauled to the vessel? State all your means of information.

Fifth Cross-Interrogatory.—If, in answer to the seventh direct interrogatory, you say you do, state how you know what was done with said packages when taken to the vessel? State all your means of information as to the time they were on the levee, and the names of your informants. Where was the Maid of Orleans lying? How long had she been in? Was she loading or unloading? Whom did you notify when the lard was delivered on the levee? Did you see it there afterwards, and when? Did you give any notice to any persons on board the ship where it was, and to whom? Is it the custom for goods to lay on the levee until they can be put on board? Were not these goods put on board with the usual dispatch?

Sixth Cross-Interrogatory.—If in answer to the eighth interrogatory, you state you do know who stored the lard inquired of, state how you know; who informed you; did you see it stored, and if any, how much of it? who else was present? on what part of the ship was it stored?

Seventh Cross-Interrogatory.—If, in answer to the ninth interrogatory, you state any matters, state particularly your means of knowledge and information, and how derived.

R. GOODMAN,
for Plaintiff.

N. Y. Common Pleas.

Cross-interrogatories, &c., Thomas Dix, Joseph Sloan, and Jacob Mussina, &c.

First Cross-Interrogatory.—How are you related to the defendants, or either of them? or how connected with them in business? or how were you at the time inquired of in the direct interrogatories.

Second Cross-Interrogatory.—If you say in answer to the third direct interrogatory, you did make the freight engagements, state if the same, or any part was in writing, and produce the writing.

Third Cross-Interrogatory.—State your means of knowledge, if you answer the fourth interrogatory, how, and from whom you acquired the information.

Fourth Cross-Interrogatory.—If you answer the sixth direct interrogatory, state how you know when the packages were taken on board the ship, or how long they remained on the levee. Are there any warehouses on the levee? Was the ship loading or unloading? how long did she lie there from the time she entered port to her departure on the voyage inquired of? Did you see any one connected with the ship in relation to the lard, (and whom, and when, and where,) after the lard was delivered on the levee? How do you know the packages of lard were coopered? How do you know in what part of the ship the lard was stored? Did you see it? Where is lard usually stored in the ship? Did you see it after it was all stored?

Fifth Cross-Interrogatory.—How do you know the custom as to shipping lard, as inquired of in the ninth interrogatory? Who informed you of it? How long has it been the custom? Can it be taken on board while the ship is unloading. Is not the lard sometimes delivered before the ship gets to the levee?

Sixth Cross-Interrogatory.—How do you know the state of the weather in July, 1854? Was it different in that year from ordinary years? Is there any cause for you recollecting that month particularly?

Seventh Cross-Interrogatory.—If you answer to the last direct interrogatory, state all your means of knowledge, and from whom you derived your information.

R. GOODMAN,
for Plaintiff.

(Endorsed.)

New York Common Pleas.

William Nelson, *et als.*,
vs.
James E. Woodruff, *et al.*

Copies of interrogatories and cross-interrogatories of witnesses in New Orleans.

DEPOSITIONS OF WITNESSES produced, sworn, and examined the nineteenth day of April, in the year one thousand eight hundred and fifty-five, at my office, in the building No. 78 Camp street, situate on the corner of Camp and Natchez streets, in the city of New Orleans, in the State of Louisiana, under and by virtue of a commission issued out of the Court of Common Pleas in and for the City, County, and State of New York, in a certain cause therein depending and at issue between William Nelson, Edward S. Dennis, Francis Burritt, Sherbourne Sears, and Aaron Cohen, plaintiffs, and James E. Woodruff, John O. Woodruff, and Robert M. Henning, defendants, as follows: Thomas A. Dix, a resident of this city, and a merchant, aged forty years and upwards, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined separately on the part of the defendants, doth depose and say as follows:

CHARLES B. SINGLETON,
Commissioner.

First. To the first interrogatory he saith: my name is Thomas I. Dix; my age is forty-two. I am a commission and forwarding merchant. My business is located in the city of New Orleans, Louisiana, where I work.

Second. To the second interrogatory he saith. I know John O. Woodruff only. I have known him about six or eight years. I shipped on the Maid of Orleans, on or about the 10th day of July, 1854, one thousand and ninety-nine barrels, and sixty-one tierces of lard, consigned to the defendants at New York.

Third. To the third interrogatory he saith: I made the freight engagement with David M. McCord and Cohen Soria, clerks of Aaron Cohen, agent of the ship Maid or Orleans. The rate of freight agreed upon between us cents per barrel and cents per tierce. It was agreed that the lard should be sent to the vessel, in the morning and evening of each day, until the whole of the lard was shipped. And it was expressly agreed on their part that the lard should be taken on board the ship as fast as the same was sent to the vessel, to avoid exposing the same to the sun, which was known to be very injurious to the lard.

Fourth. To the fourth interrogatory he saith: The packages containing the lard were in good order at the time the same were delivered to the said vessel. They had been previously well coopered before being sent to the vessel, and after they were sent to the vessel a cooper was sent for the purpose of seeing that they were in complete order and good condition. The packages were delivered to said vessel in the cool of the day, morning and evening, and the said packages were full when so delivered.

Fifth. To the fifth interrogatory he saith: I have been engaged in the business of buying and selling lard in this city

during the last two years. The effect of the sun upon lard exposed to it in this city is to cause the lard to melt, and run out of the packages, and it also causes the lard to become rancid much sooner than when not thus exposed to the rays of the sun in the open air. The sun also causes the hoops to "start" from the boards, owing to the shrinking of the wood.

Sixth. To the sixth interrogatory he saith: Some of the packages were not taken on board the said vessel as soon as hauled upon the levee, but remained on the levee some two days or more. The quantity thus exposed to the sun on the levee, I cannot state.

Seventh. To the seventh interrogatory he saith: The packages were well coopered previous to being shipped.

Eighth. To the eighth interrogatory he saith: I know not.

Ninth. To the ninth interrogatory he saith: It is the custom in this city to ship lard in the cool of the day, morning and evening, and to take it on board as soon as delivered to the ship in order to avoid exposure to the sun.

Tenth. To the tenth interrogatory he saith: The weather in July, 1854 was very warm.

Eleventh. To the eleventh interrogatory he saith: I do not know anything further than already stated.

Cross-Interrogatories.

First. To the first cross-interrogatory he saith: I am not related to the defendants, or either of them. I am not connected with them in business, except occasionally I make shipments to them, nor was I at the time of said shipment.

Second. To the second cross-interrogatory he saith: The freight engagement above spoken of was a verbal one, as is customary in this city, and not a written one.

Third. To the third cross-interrogatory he saith: I acquired my information from my boss drayman, Patrick Welch, and my cooper.

Fourth.—To the fourth cross-interrogatory, he saith: I acquired my knowledge from the persons named in my answer to the last preceding interrogatory. There are no warehouses on the levee proper. The ship was loading for New York at the time the lard was sent to her. I cannot state how long she remained in port. I saw no one connected with the ship after the lard was delivered to the vessel on the levee. I learned that the packages of lard were coopered from the persons named in my answer to the third cross-interrogatory, and from having paid the cooper's bill for the same. I did not see the lard after it was taken on board the ship, and cannot state in what part of the ship it was stowed. Lard is usually stowed in the hold of a vessel.

Fifth.—To the fifth cross-interrogatory, he saith: I know the existence of such custom from my experience in business, and its universal recognition by all persons engaged in that business. It

has always been the custom since I have been in business in the city; the custom was fully recognized when I first came to this city. I cannot state whether lard can be taken on board a ship while the ship is being unloaded; it might under particular circumstances. I have no experience in loading ships. I am not aware that lard is ever delivered to a ship before the ship gets to the levee. I have never heard of a case of the kind, and I would think any man crazy who would thus deliver lard.

Sixth.—To the sixth cross interrogatory, he saith: I know the weather was in July, 1854, very warm, from the fact that I was in this city at the time. There is no cause particularly of my recollecting the weather in July, 1854; the weather in that month is always warm in this city.

Seventh.—To the seventh cross interrogatory, he saith: I communicated no information in my answer to the eleventh direct interrogatory, and further I know not.

THO. J. DIX.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this the 19th day of April, 1855.

And at my office aforesaid on this, the 21st day of April, 1855, appeared before me Joseph S. Sloan, a resident of this city, and by occupation a produce-broker, aged upwards of forty-four years, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the defendants, doth depose and say as follows:

First.—To the first interrogatory he saith: His name is Joseph S. Sloan, aged upwards of forty-four years; his business is a produce-broker, and that his business is located in the city of New Orleans, Louisiana, where he works.

Second.—To the second interrogatory he saith: He knows the defendants to this suit, and has known them about six years. He did not make any shipment of lard, consigned to the defendants, for the ship "Maid of Orleans," in the month of July, 1854.

Third.—To the third interrogatory, he saith: He knoweth not.

Fourth.—To the fourth interrogatory, he saith: He knoweth not.

Fifth.—To the fifth interrogatory, he saith: He has been engaged in buying, selling and shipping lard during the last fifteen years, and during all that time he was engaged quite extensively, and for the last five years very extensively indeed. That the house of De la Rue & Stearn, of which he is a member, buys and ships the largest portion of the lard brought, and shipped about seventy thousand barrels of lard. The effect of the sun upon lard in the open air, in this city, in the month of July, is very in-

jurious. That he never ships lard except early in the morning and late in the evening, in order to avoid the very injurious effect of the sun upon it. That occasionally he buys lard on the levee, which has never been in store in this city, and lard thus bought is necessarily exposed to the sun more or less.

Sixth. To the Sixth Interrogatory, he saith: He knoweth not.

Seventh. To the Seventh Interrogatory, he saith: He knoweth not.

Eighth. To the Eighth Interrogatory, he saith: He knoweth not.

Ninth. To the Ninth Interrogatory, he saith: It is the custom in this City to ship lard very early in the morning and late in the evening, and when hauled to the ship or ships it is expected that the same will be immediately taken on board, and such is the custom in this port. When shipping lard, he frequently visits the vessels receiving the same to ascertain whether they comply with this custom. That it is the custom of thus shipping lard very early in the morning and late in the evening and taking the same immediately on board the vessels for the express purpose of avoiding the very injurious effect of the sun on the lard, and for no other purpose.

Tenth. To the Tenth Interrogatory, he saith: That the weather in July, 1854, was excessively warm, a great deal warmer than it was usually in this city during that month for some years past.

Eleventh. To the Eleventh Interrogatory, he saith: Lard exposed to the rays of the sun in the month of July in this city, becomes very soft, and escapes from the packages, which are shrunk by the effect of the sun upon them. The loss on lard thus exposed is usually very great.

Cross Interrogatories.

First. To the First Cross-Interrogatory, he saith: He is not related to the defendants in any manner whatever, neither is he now, nor was he in July, 1854, connected with them in business. He is not related to the defendants or either of them, and was in no manner connected with them, or either of them, in business at the time enquired of in the direct interrogatories.

Second. To the Second Cross-Interrogatory, he saith: He has not said that he made the freight engagement in answer to the third.

Third. To the Third Cross-Interrogatory, he saith: He did not answer the fourth interrogatory except in the negative.

Fourth. To the Fourth Cross-Interrogatory, he saith: He answered the fourth interrogatory in the negative.

Fifth. To the Fifth Cross-Interrogatory, he saith: He knows the custom from his long experience in the business, no one informed him of it, for he observed the custom by seeing it observed by all those engaged in shipping lard. It was the custom about

nineteen years ago when he first came to this city; the custom was then in full force at that time; lard might be taken on board while the ship was unloading under certain circumstances; it might be temporarily stowed between decks; he never knew any lard to be delivered to a ship before she reached the levee; it may have been done but thinks it imprudent even in winter.

Sixth. To the Sixth Cross-Interrogatory, he saith: He recollects that the month of July, 1854, was very hot, from the very fact of its being exceedingly warm, and also from the fact that he did during said month, and often since, speak of the heat of that month.

Seventh, To the Seventh Cross-Interrogatory, he saith: His means of knowledge is his actual observation and long experience in the business.

JAS. S. SLOAN.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this, the 21st day of April, 1855.

CHARLES B. SINGLETON,
Commissioner.

And at my office aforesaid, on this, the 23d day of April, 1855, appeared before me, Thomas Dennen, a resident of this City, and by occupation a Cooper, aged upwards of thirty-five years, and being duly and publicly sworn, pursuant to the directions hereto annexed, and examined separately on the part of the defendants doth depose and say follows:

First. To the First Interrogatory, he saith: His name is Thomas Dennen, aged above thirty-five years, by occupation a Cooper, and resides in the City of New Orleans, Louisiana.

Second To the second interrogatory he saith: That he knows none of the parties to this suit except John O. Woodruff. Has known him by sight ten or twelve years. Does not recollect the exact time.

Third. To the third interrogatory he saith: He knows the ship "Maid of Orleans." He was employed in the month of July, 1854, to cooper some barrels and teirces of lard that were shipped in said vessel. He was employed by Mr. Thos. J. Dix, of the firm of Kennett, Dix & Co., in said month of July, 1854. The packages were in good condition, except an occasional one which required a little driving. The packages required very little coopering, and what were coopered, were well coopered. He cannot state positively whether all the packages were full, but from their appearance, they seemed to be full. When the last lard was hauled to the "Maid of Orleans," it was in splendid condition.

Fourth. To the fourth interrogatory he saith: That the weather during the month of July, 1854, in this City was very hot.

Fifth. To the fifth interrogatory he saith: That he knoweth not. He was not employed to dray the lard.

Sixth. To the sixth interrogatory he saith: He did not haul the lard to the vessel, but, that he saw the drayman employed for that purpose hauling it. It was hauled to the vessel early in the morning, and late in the evening of each day.

Seventh. To the seventh interrogatory he saith: He sent a boy to the vessel on a Saturday to cooper one barrel; and, that the mate was not pleased with the manner this boy coopered the barrel; and, that he went to the vessel early on Monday morning, and found still on the levee, exposed to the sun, a considerable quantity of lard which had been hauled to the said vessel on the Saturday previous and the days previous thereto. This lard was placed in tiers on the levee. The exact quantity he cannot give, but there were two or three pretty long tiers laying close to the side of the ship. This lard had been on the levee from Saturday until Monday. That he remarked to the mate that the lard thus exposed was loosing very much.

Eighth. To the eighth interrogatory he saith: He knoweth not.

Ninth. To the ninth interrogatory he saith: He knows nothing more about this matter than he has already stated.

Cross-Interrogatories.

First. To the first cross-interrogatory he saith: He was not at the time of said shipment connected with the defendants or either of them in any manner whatever, neither has he been since.

Second. To the second cross-interrogatory he saith: All the barrels were nailed, and any of the packages which required driving were stripped, and the hoops driven on tight. He means by all the barrels, all the packages were nailed in order to keep the hoops from slipping. All the packages were coopered in the Montgomery Warehouse, except the one barrel coopered on the Levee, as stated above. He used the ordinary cooper's adze; and what hoops were supplied, were made out of the ordinary hickory poles used for that purpose. He has carried on a cooper's shop on his own account about five years. He has worked at the business as journeyman about three years. He served as apprentice to the business four years.

Third. To the third cross-interrogatory he saith: He recollects the weather in July, 1854, was hot, because he felt it to be so. He recollects the lard was hauled in the morning and evening of each day, as stated above, just as he would any other fact he knew and had not forgotten.

Fourth. To the fourth cross-interrogatory he saith: He has stated nothing in regard to the condition of the lard in his answer to the sixth interrogatory, and that he recollects the time of day the same was hauled just as he does any other fact not forgotten

by him. His means of information consists in his seeing the lard hauled.

Fifth.—To the fifth cross-interrogatory, he saith: That in his answer to the seventh interrogatory, he stated that he saw the lard on the levee early in the morning, on Monday before any had been hauled on said Monday to the ship, and as none of the lard had been hauled to the ship on the previous Sunday he knows the lard he saw on the levee early on Monday morning, as stated before, had been hauled there on the previous Saturday, or days previous thereto. The "Maid of Orleans," was lying nearly abreast of the Vegetable Market, in the second district of this city. She was loading at the time he saw the lard thus exposed. It is customary to leave goods on the levee, until they can be taken on board. And it is also customary for vessels to receive lard early in the morning and late in the evening, and to take the same immediately aboard the vessels, in order to avoid the injurious effects of the sun upon the lard. This lot of lard was not taken on board the Maid of Orleans, with the usual dispatch.

Sixth.—To the sixth cross-interrogatory he saith: He could not answer the eighth interrogatory, except to express his ignorance of the matters inquired of.

Seventh.—To the seventh cross-interrogatory he saith: He answered the ninth interrogatory, in the negative. He communicated no information in answer thereto.

THOMAS DERNEN.

Examination taken reduced to writing, and by the witness subscribed and sworn to, this the 23d day of April, 1855.

CHARLES B. SINGLETON,
Commissioner.

And at my office aforesaid, on this the 24th day of April, 1855, appeared before me Patrick Murphy, a resident of this city, and by occupation a drayman, aged upwards of nineteen years, and being duly and publicly sworn, pursuant to the directions hereto annexed, and examined separately, on the part of the defendants, doth depose and say as follows:

First.—To the first interrogatory he saith: His name is Patrick Murphy, age upwards of nineteen years, occupation a drayman, and resides in the city of New Orleans, Louisiana.

Second.—To the second interrogatory he saith: He does not know any of the parties to this suit.

Third.—To the third interrogatory, he saith: He knows the ship "Maid of Orleans," was not employed to cooper any barrels shipped on board. He was employed by Kennett, Dix & Co., to haul a lot of lard to said vessel, in the month of July, 1854. The packages seemed to be in good order, and from the way they handled, the said packages seemed to be full.

Fourth.—To the fourth interrogatory, he saith: The weather in July, 1854, was very hot. The lard was hauled to the said vessel very early in the morning, and very late in the evening of each day.

Fifth.—To the fifth interrogatory he saith: He was employed to haul the lot of lard inquired of, in the month of July, 1854, to the ship "Maid of Orleans," then lying in the port of New Orleans. He was employed by Kennett, Dix & Co., merchants of this city. There were about twelve hundred barrels and tierces altogether, the exact number he cannot now remember. He was assisted to haul this lot of lard by four or five other draymen.

Sixth.—To sixth interrogatory, he saith: The barrels and tierces when hauled by him and the man employed by him for that purpose were in good condition, being well coopered, and light previous to being taken to the said vessel, none of the lard was hauled later than ten o'clock in the morning of each day, and he did not begin to haul any in the evening until between three and four o'clock in each evening. The first load each evening reached the vessel about four o'clock. All the lard was delivered to those in charge of said vessel, very close to the vessel, not more than thirty to forty feet distant from the "Maid of Orleans," the same being landed at the same vessel as near as those in charge of her desired the same to be placed.

Seventh.—To the seventh interrogatory he saith, that many of said packages hauled in the morning, remained on the levee exposed to the sun until next morning, and the greater part of said packages hauled in the evening, remained thus exposed on the levee until the evening of the next day. Some of them might have remained longer. He never saw lard thus exposed at that season of the year. The lard when delivered to the ship was in fine condition, except one barrel, which was coopered after it was taken to the ship.

Eighth.—To the eighth interrogatory he saith, he does not know who stored this lard, and cannot tell how long it was in being stored, or how long it was stored. That after finishing draying the lard he didn't go to the vessel any more, and cannot tell how long it remained on the levee before it was taken on board the vessel and stored away.

Ninth.—To the ninth interrogatory he saith, that lard thus exposed to the hot sun will injure and waste away very much. And further he saith not.

Cross-Interrogatories.

First.—To the first cross-interrogatory he saith, he is not at this time connected with or related to the defendants in this suit, or either of them, and has never been in any manner whatever.

Second.—To the second cross-interrogatory he saith, he did not cooper the barrels or tierces or either.

Third.—To the third cross-interrogatory he saith, he recollects the weather was in the month of July, 1854, very warm, because he felt the heat on many occasions during that month and has not forgotten the fact. He recollects it just as he does any other fact he has not forgotten. He recollects the time of the day the lard was hauled because he hauled a portion himself and superintended the hauling of the entire lot.

Fourth.—To the fourth cross-interrogatory he saith, he knows the condition of the barrels and tierces from having seen and examined the same, and also from having assisted to haul them. He also knows the time of day they were hauled because he hauled a portion of the lot and superintended the hauling of the entire lot.

Fifth.—To the fifth cross-interrogatory he saith, he knows the packages of lard were left on the levee, as stated in his answer to the seventh direct interrogatory, from having seen the same thus exposed and from observing the fact; no one informed him of it. He saw it himself. The "Maid of Orleans" was lying about the vegetable market in the second district of this city; he thinks she was loading. He notified the mate when the lard was delivered at the vessel. The mate was present at the vessel all the time the lard was being delivered and signed the dray receipts for the vessel. He was not especially notified of the delivery otherwise than his being present and signed the dray receipts for the lard. It is the custom for goods to lay on the levee until they can be put on board. It is not so much a custom as a necessity. It is also customary to take lard on vessels as soon as delivered.

Sixth.—To the sixth cross-interrogatory he saith, he did not state, in his answers to the eighth interrogatory, who stored the lard. He does not know who stored the lard, and cannot tell in what part of the ship it was stored.

Seventh.—To the seventh cross-interrogatory he saith, he knows that lard will waste very much by being exposed to the hot sun, from having observed the fact.

his
PATRICK ⋈ MURPHY.
mark.

Examination taken, reduced to writing, and by the witness subscribed, by making his mark, (he being unable to write his name from the fact that he never learned to write,) and sworn to, this 24th day of April, 1855.

CHARLES B. SINGLETON, *Commissioner.*

And at my office aforesaid, on this, the 25th day of April, 1855, appeared before me, Jacob Mussina, a resident of this city, and by occupation a produce-broker, aged upwards of forty-six years, and being duly and publicly sworn, pursuant to the directions hereto annexed, and examined separately on the part of the defendants doth depose and say as follows:

First. To the first interrogatory, he saith: His name is Jacob Mussina, aged about forty-seven years, and by occupation a produce broker; his business is located in the City of New Orleans, Louisiana, where he works.

Second. To the second interrogatory, he saith: He knows only John O. Woodruff, whom he has known about eleven years; he has no recollection of making any shipment to the defendants of any lard in the month of July, 1854, on board the ship "Maid of Orleans."

Third. To the third interrogatory, he saith: He has no knowledge of having made any such freight engagement; he never made any such engagement.

Fourth. To the fourth interrogatory, he saith. he knoweth not.

Fifth. To the fifth interrogatory, he saith: He has been buying and shipping lard extensively during the last thirteen years, throughout the various seasons of the year. Lard exposed to the sun in the open air, during the month of July, in this city softens it, and often makes it necessary to recooper the packages, and if not re-coopered, it loses from five to fifteen per cent., and in some cases it loses a great deal more, depending a great deal on the character of the packages. Packages that will often contain lard with but very little loss when not exposed to the sun, will, when exposed to the sun in July of any year, lose very heavily. The sun in the month of July, in this city, has a very injurious effect both upon the packages and the lard, unless the lard is of a very superior quality; when thus exposed to the sun it becomes oil, and ceases to be lard.

Sixth. To the sixth interrogatory, he saith: He knoweth not.

Seventh. To the seventh interrogatory, he saith: He knoweth not.

Eighth. To the eighth interrogatory, he saith: He knoweth not.

Ninth. To the ninth interrogatory, he saith: That it is the custom in this city, during the warm season, to ship lard early in the morning and late in the evening of each day. That it is customary to take it immediately on board, that is, as soon as it is delivered to the vessel, *as soon as the same is delivered to the vessel.*

Tenth. To the tenth interrogatory, he saith: That the weather in this city during the month of July, 1854, was very hot.

Eleventh. To the eleventh interrogatory, he saith: He knows nothing more than he has already stated.

Cross Interrogatories.

First. To the first cross-interrogatory, he saith: He is not related to the defendants, or either of them, in any manner whatever, and was not at the time inquired of. He was not connected with the defendants, or either of them, in business, at the time inquired, neither has he been connected with them, or either of them, since.

Second. To the second cross-interrogatory, he saith: He did not make the freight engagement inquired of.

Third. To the third cross-interrogatory, he saith: He answered the fourth interrogatory, that he knoweth not.

Fourth. To the fourth cross-interrogatory, he saith: He answered to the sixth interrogatory, that he knoweth not.

Fifth. To the fifth cross-interrogatory, he saith: He knows the custom from thirteen years experience in buying and shipping lard to the various ports in America and Europe. No one informed him of the existence of the said custom, he always observed it himself, and he saw all those engaged in buying and shipping lard observing it. It is a custom founded on absolute necessity, in order to preserve that kind of property from great and serious loss. The custom has existed ever since he has been in the city; when he commenced business in this city, he found it in full force, and strictly observed. He has never known of an instance of lard being delivered on the levee before the ship reached the levee. He would consider such a course exceedingly imprudent. Lard may be taken on board while the ship is unloading, and placed between decks.

Sixth. To the sixth cross-interrogatory, he saith: The weather in July, in this city, is generally very warm, and in July, 1854, his family was absent from the city *travelling*, and his anxiety concerning them, caused him to notice the state of the weather more particularly than he would otherwise have done.

Seventh. To the seventh cross-interrogatory he saith: That he made only a negative answer to the last direct interrogatory, and that being the case he can make no answer to this interrogatory.

J. MUSSINA.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this, the 25th day of April 1855.

CHARLES B. SINGLETON,
Commissioner.

And at my office aforesaid on this the ninth day of May, 1855, appeared before me Charles Stanmeyer, a resident of this city and by occupation a cooper, aged upwards of twenty-four years, and being duly and publicly sworn pursuant to the directions hereto annexed, and examined separately on the part of the defendants, doth depose and say, as follows:

First. To the first interrogatory, he saith: His name is Charles Stanmeyer; aged upwards of twenty-four years; occupation, a cooper, and he resides in the city of New Orleans, in the State of Louisiana.

Second, To the second interrogatory, he saith: He does not know any of the parties to this suit, personally.

Third. To the third interrogatory he saith; He does not know the ship "Maid of Orleans." He was employed to cooper some barrels and tierces of lard, which were shipped on said vessel, in the month of July, 1854. He knows the lard was shipped on said

vessel, by having seen the dray receipts for the same. He was employed by Kennett, Dix & Co., of this city in the month of July, 1854, as already stated. The packages when shipped were in good order and condition and the same required but little labor to put them in good order and condition. The packages were well coopered. The packages, from the way they felt in being coopered, were full, with the exception of two which had about fifty pounds out of each.

Fourth. To the fourth interrogatory, he saith: The weather, in the month of July, 1854, was uncommonly warm. The lard was hauled to the ship early in the morning and late in the evening of each day.

Fifth. To the fifth interrogatory, he saith: He was not employed to haul said lot of lard, or any other lot, in the month of July, 1854,

Sixth. To the sixth interrogatory, he saith: He did not haul the lard, but that he knows the same was hauled early in the morning and late in the evening of each day.

Seventh. To the seventh interrogatory, he saith: He does not know what was done with the lard when taken to the ship.

Eighth. To the eighth interrogatory, he saith; He knoweth not.

Ninth. To the ninth interrogatory, he saith: He knoweth nothing further that will benefit the defendants.

Cross-Interrogatories.

First. To the first cross-interrogatory, he saith; He was not in any manner related to the defendants in this suit, or either of them, at the time of the matters inquired of, or since.

Second. To the second cross-interrogatory, he saith: There were about eleven hundred barrels and tierces, perhaps there were more. He coopered them in the month of July, 1854, in the Montgomery warehouse where the same was protected entirely from the rays of the sun. The materials used for coopering was the ordinary cooper's adze, and the ordinary hickory poles were used for hoops when needed. He served an apprenticeship of five years at the cooper's business, and has, exclusive of said five years, been working at the business during seven years.

Third. To the third cross-interrogatory, he saith: His means of learning the state of the weather in July, 1854, consisted in the fact of his being at the time in this city and actually feeling the intensity of the heat. He recollected the time of the day the lard was hauled, because he saw it hauled, and has not forgotten the fact.

Fourth. To the fourth cross-interrogatory, he saith: He knows the condition of the barrels when put on the drays, to be taken to the vessel, because it was his duty to see that all the packages were in good order and condition. He has stated that he did not see the lard after it was hauled to the vessel. He has already

stated that he knows the time of the day the same was hauled to the vessel.

Fifth. To the fifth cross-interrogatory, he saith: He could not answer the seventh interrogatory, except to express his ignorance of the matters therein inquired of. He does not know where the Maid of Orleans was lying. He gave no notice to any person concerning the lard. He knows nothing as to the custom of goods remaining on the levee until the same can be put on board. Does not know whether these goods were put on the vessel with the usual dispatch. He never saw the lard after the same was hauled to the vessel.

Sixth.—To the sixth cross-interrogatory, he saith: To the eighth interrogatory, he answers: "He knoweth not."

Seventh.—To the seventh cross-interrogatory, he saith: His answer to the ninth interrogatory was, "he knoweth nothing further that will benefit the defendants."

CHARLES STANMEYER.

Examination taken, reduced to writing, by the witness, and subscribed and sworn to, this 9th day of May, 1855, before me,

CHARLES B. SINGLETON,
Commissioner.

Clerk's Office, Court of Common Pleas, for the City and County of New York.

I, Benjamin H. Jarvis, Clerk of said Court, do hereby certify that I have compared the preceding copies of answers to certain interrogatories with the originals thereof annexed, to a commission on file in my office, and that the same are correct transcripts therefrom, and of the whole of said originals.

In witness whereof I have hereunto set my hand, and seal of office, this 5th day of December, 1855.

[SEAL.]

B. H. JARVIS, *Clerk.*

(Endorsed.)—N. Y. Common Pleas.

Wm. Nelson, and others, against Jas. E. Woodruff, and others. Copy answers to Interrogatories annexed to a Commission.

Jno. O. Woodruff & Co.

No.—

New Orleans, July 12, 1854.

$6,615 $\frac{56}{100}$.

Seventy days after date, pay to the order of ourselves, sixty-six hundred and fifteen $\frac{56}{100}$ dollars, value received, and charge the same to account.

As advised.

To Messrs. James E. Woodruff & Co., New York.

E. JNO. O. WOODRUFF & CO.

(Endorsed.)—Charge Sales Lard, and cr. our acct.

JNO. O. WOODRUFF & CO.,

Credited Jno. O. Woodruff & Co., in acct., July 20, 1854.

Jno. O. Woodruff & Co.

$21,510 $\frac{88}{100}$.

New Orleans, June 29, 1854.

Seventy days after date, please place to the debit of Shipment Lard, per ship Maid of Orleans, twenty-one thousand five hundred and ten $\frac{88}{100}$ dollars. Value received, from John O. Woodruff & Co.

KENNETT, DIX & CO.

To Messrs. James E. Woodruff & Co., New York.

E.

(Endorsed.)—Credited John O. Woodruff & Co., on acct. July 13, 185 4.

Shipped, in good order and condition, by Jno. O. Woodruff & Co., on board the ship called the "Maid of Orleans," whereof Dennis is master, now lying in the port of New Orleans, and bound for New York, that is to say:

W. 111. One hundred and eleven tierces lard.
196. One hundred and ninety-six barrels do.

111 Tcs., $1 53, $169 83
196 Bbls., $1 15, 225 40
$395 23
19 76
$414 99

Being marked and numbered as in the margin, and are to be delivered in the like good order and condition, at the port of New York (the dangers of the Navigation and fire only excepted, unto James E. Woodruff & Co., or to their assigns, he or they paying freight for the said lard one $\frac{15}{100}$ dollar per barrel, and one $\frac{53}{100}$ dollar per tierce, with 5 per cent. primage and average accustomed.

In witness whereof, the Master of the said vessel hath affirmed to three Bills of Lading, all of this tenor and date, one of which being accomplished, the others to stand void.

New Orleans, July 11, 1854.

Bbls.	Tcs.	
6	16	Contents unknown.
45	20	
22	40	
22	30	
21	5	
22		
6	111	
5		
12		
18		
11		
6		
196		

KENNETT, DIX & CO.,

Commission and Forwarding Merchants,
New Orleans.

Engraving of a Ship in full sail.

South'n Ladie's Book Print.

Shipped, In good order and well conditioned by Kennett, Dix & Co., for account and risk of whom it may concern, on board the good ship called the Maid of Orleans, whereof E. P. Dennis is Master for the present voyage, now lying at the port of New Orleans, and bound for New York, the following articles:

Burrows & Pettiman.	293	Two hundred and ninety-three bbls. lard
M. & C.	319	Three hundred and nineteen bbls. do.
Green & Stone.		
Lemp.	205	Two hundred and five bbls. lard
H.	233	Two hundred and thirty-three bbls lard
	38	Thirty-eight tierces lard
P.	23	Twenty-three tierces lard
	7	Seven barrels lard
Green & Stone.		
D.	42	Forty-two barrels lard

Charges. dol. cts.
Freight,
Postage & B. Lad'g,
Drayage,
Storage and labor,
Forwarding chg's,

1090 Bbls. at $1 15, $1,253 85
61 Tcs. at 1 50, 91 50
1,345 35
67 77
$1,423 12

Being marked and numbered as in the margin, which are to be delivered without delay in the like good order at the port of New York, (the dangers of the seas and fire only excepted,) unto J. E. Woodruff & Co., or to their assigns, he or they paying freight for the said goods at the rate of one dollar and fifteen one-hundredths per barrel, and one dollar and fifty one-hundredths per tierce —— —— with five per cent. primage and average accustomed.

In witness whereof, the Master or Purser of said ship hath affirmed to —— Bills of Lading, all of this tenor and date, one of which being accomplished the others to stand void.

Dated in New Orleans, this 11th day of July, 1854. (Contents unknown.)

B & P Bbls.	M & C Bbls.	H	H Tcs.	Lemp Bbls.	D	P Bbls.	P Tcs.	Bbls.	Tcs.
70	5	25	18	80	19	7	8	40	18
20	3	30	10	10	10		15	10	10
55	65	5	——	30	13		——	50	8
35	10	20	28	20	——		23	15	15
20	5	42	10	13	42			10	10
40	15	10	——	5				80	——
5	5	20	38	47				10	61
10	15	40		——				40	
40	40	15		205				80	
——	15	40						60	
295	10	——						50	
	10	247						20	
	10							40	
	10							5	
	10							10	
	10							40	
	7							19	
	20							10	
	15							13	
	13							7	
	10							10	
	——							57	
	303							60	
								15	
								5	
								5	
								15	
								35	
								10	
								65	
								25	
								38	
								80	
								70	
								——	
								1099	

Bbls.	Tcs.
293	38
319	23
205	—
233	61
7	
42	
——	
1099	

(Duplicate.)

Return of Merchandise weighed for Messrs. J. E. Woodruff & Co.,

viz.:			Gross.	Tare.
Burrows & Prettyman.	185	Bbls lard	46399	
Green & Stone.	123	" "	26576	5712
M & C	214	" "	42842	
No mark.	51	" "	12298	
H	16	" "	3912	
P	8	" "	1991	
H	17	Tcs. "	5974	
P	7	" "	2317	
M & C	3	" "	664	

BURROWS & PRETTYMAN.

263	202	273	257	271	278	222.	261	249	
272	261	265	268	256	262	250	243	262	
273	263	270	275	258	228	260	267	261	
249	269	276	247	264	253	248	245	244	
255	260	258	222	272	252	206	263	257	
259	252	243	239	280	263	272	237	262	
210	255	246	265	257	261	264	253	267	
267	225	272	263	271	284	265	266	237	
273	272	282	266	271	266	272	269	254	
261	246	274	256	2 3	256	246	244	265	
2582	2505	2659	2558	2665	2603	2505	2548	2558	
265	274	275	256	219	265	235	259	271	
275	276	230	254	274	253	274	207	264	
273	271	263	244	272	274	272	273	168	
262	200	280	264	257	272	267	276	169	
277	246	245	233	263	266	252	227	69	
255	248	278	257	274	256	261	245	198	193
262	259	256	237	254	249	256	270	190	180
261	245	265	244	273	213	251	264	173	125
243	274	247	245	265	266	265	253	188	55
275	267	267	245	260	261	265	259	193	175
2648	2560	2606	2479	2611	2575	2598	2533	1833	725

GREEN & STONE.

221.42	244.44	264.50	237.40	221.45	249.45	206.52
245.50	272.47	232.46	250.45	223.45	258.47	266.50
258.45	228.49	264.50	229.44	229.50	239.44	219.48
255.46	263.48	220.45	248.45	260.44	245.45	207.49
256.48	210.42	236.45	250.42	246.44	214.45	207.50
234.46	269.46	256.49	258.43	249.44	210.51	269.49
261.47	273.48	266.44	257.45	241.45	247.46	266.46
268.48	260.48	267.44	231.45	260.45	244.44	263.45
247.45	243.40	252.47	253.49	252.48	214.44	218.49
247.44	262.46	243.48	258.46	260.46	204.43	261.46
2492.461	2524.458	2500.469	2471.444	2436.456	2324.454	2382.484

216.45	219.51	130.47	136.43	144.46	
222.46	250.43	50.45	185.45	94.52	
258.41	260.47	136.52	186.42	81.47	
207.46	215.42	164.49	180.45	171.56	
241.44	243.43	194.43	54.43	189 52	
217.44	268.48	194.51	133.50	135.59	
220.48	205.48	183.43	96.54	197.45	
212.42	228.40	195.48	81.49	136.46	175.45
211.48	154.51	134.48	64.48	121.50	185.46
228.45	196.50	194.52	170.43	180.50	210.48
2232.450	2238.463	1574.478	1385.462	1448.494	570.139

M. & C.

235	255	245	237	256	264	208	256
238	246	223	264	237	246	260	238
251	248	211	234	221	261	226	265
264	257	235	264	262	246	253	234
250	244	206	265	260	209	257	224
234	260	208	256	214	245	239	273
236	249	256	234	201	241	226	222
246	231	275	255	230	207	249	218
247	203	232	244	225	256	255	241
237	215	263	262	265	251	268	270
2438	2414	2353	2515	2371	2426	2441	2441

235	266	251	237	251	265	117	199
263	264	275	236	237	273	116	168
245	205	252	232	232	83	125	175
265	252	268	228	245	192	139	184
254	206	215	248	263	173	108	180
278	200	223	260	234	171	104	187
205	266	267	245	246	193	156	142
273	262	230	270	244	178	117	113
252	241	239	263	265	169	165	97
222	246	246	230	222	175	185	175
2492	2408	2466	2449	2439	1872	1332	1620

						H.	
173	86	771	170	144			
136	73	135	158	112			
76	113	171	97	142		274	267
148	164	55	56	77		277	240
99	118	102	52	139		266	260
98	99	92	132	68		289	248
98	180	198	120	107	171	244	256
152	144	121	87	96	130	238	276
102	48	55	52	144	96	255	143
93	157	69	189	184	116	259	120
1175	1182	1169	1113	1213	513	16.3912	

NO MARK.

				246	
245	296	256	275	268	P.
276	249	256	270	275	
251	248	265	255	265	255
262	202	271	271	257	297
263	215	269	238	276	239
222	221	245	245	184	272
230	186	243	272	120	234
239	268	270	238	158	259
246	243	263	264	69	252
227	237	285	254	149	183
2461	2365	2623	2582	2267	1991

H.	Tierces.		P.	M. & C.
			370	
352	344		339	
349	350	350	370	
345	357	347	278	
351	347	359	240	261
347	350	360	350	294
352	361	353	370	119
	17.5974		7.2317	674

JOHN H. WOOD,
Weigher.

New York, 15*th Nov.*, 1854.

(Endorsed.)
A.
D. P. J. Exhibit (1).

Return of Merchandize weighed for Messrs. Jas. E. Woodruff & Co.

viz.:			Gross.	Tare.
Green & Stone,	82	bbls. Lard,	19,629	3,805
(H.)	20	" "	5,183	
M. & C.,	8	" "	1,850	
Burrows & Prettyman,	3	" "	758	
P.,	3	" "	931	
"	12	tierces "	4,338	
(H.),	21	" "	7,363	

GREEN & STONE.

219.49	261.42	243.48	216.49	236.48	255.46	270.48
267.76	183.40	237.42	231.51	237.46	241.43	278.43
234.47	250.45	225.41	232.46	197.50	209.42	263.45
239.48	246.44	205.51	228.49	237.43	256.46	258.47
217.51	266.45	248.45	260.52	232.44	190.49	225.51
213.48	204.55	259.48	253.45	217.48	255.48	239.49
256.46	271.50	214.46	248.42	242.47	220.48	263.47
259.48	250.44	235.45	253.46	212.43	242.45	265.47
229.48	247.44	240.43	246.41	235.47	263.41	220.44
266.48	247.48	260.46	250.46	264.47	220.46	222.53
2399.479	2425.457	2366.455	2417.467	2309.463	2351.454	2473.474

H. bbls.				M. & C. bbls.	Burrows & Prettyman.	P.
263.47		270	259			
245.46		259	263			
223.48		289	272	179		
266.48		194	247	250		
240.46		268	258	181		
246.47		257	265	245		
250.45		244	245	260		
206.48		254	264	214	252	308
259.48	209.50	265	269	269	254	331
253.42	229.44	265	276	252	252	292
2451.465	438.94	20.5183		8.1850	3.758	3.931

P. tierces.		N. tierces.		
378	354	353	361	354
358	375	356	351	334
375	373	353	327	361
371	380	352	352	351
326	334	347	358	351
373	341	323	351	341
12.4338		346	353	368
		21.7363		

JOHN H. WOOD.
Weigher.

New York, 4th Nov., 1854.
B.,
D. P. J.

(Duplicate.)

Returns of Mdze., weighed for Messrs. James E. Woodruff & Co.

Burrows & Prettyman,	85	Bbls	Lard	21832 lbs.
Green & Stone,	37	"	"	8999 " 1680.
M. & C.	28	"	"	6715 "

BURROWS & PRETTYMAN.

261	257	226	243	260	266	248	264	
243	261	274	238	242	263	234	240	
246	266	248	277	251	351	258	262	
252	274	268	265	245	254	268	249	
281	242	272	263	264	226	236	276	
271	269	262	243	248	232	248	281	243
243	243	268	257	256	272	267	212	277
278	220	269	265	219	266	277	260	253
265	259	287	244	271	260	255	244	274
263	244	274	278	243	274	255	229	270
2613	2555	2648	2573	2499	2564	2546	2517	1317

GREEN & STONE.

				M. & C.		
228.49	21.648	235.46		246	222	
257.48	256.44	235.45		237	248	
259.40	290.46	242.44		215	247	246
202.46	211.48	230.42	238.47	227	233	207
262.51	260.43	261.44	256.44	225	266	208
253 40	254.44	252.45	240.45	262	239	228
240.42	217.42	260.45	243.51	223	247	260
259.48	220.41	233.50	239.42	259	215	246
208.45	260.45	200.51	263.45	250	207	269
248.44	264.48	265.47	263.45	260	262	261
2416.453	2428.449	2413.459	1742.319		28,6715	

JOHN H. WOOD, *Weigher.*

New York, 15*th November*, 1854.

C. D. P. J.

(Duplicate.)

Return of Mdze, weighed for Messrs. James E. Woodruff & Co. viz.

H. 200 Bbls. Lard, 51575 lbs.

256	263	286	262	253	250	265	256
257	220	234	234	256	270	235	270
261	266	249	277	263	240	274	224
277	256	251	254	278	259	269	266
253	264	279	255	268	257	266	249
269	261	269	258	203	245	265	276
252	264	262	250	264	242	256	255
255	257	269	262	282	272	262	262
272	252	244	251	260	283	271	260
256	271	248	267	250	249	205	267
2608	2574	2591	2570	2577	2567	2568	2588
221	273	266	256	183	276	268	275
249	271	227	223	268	268	264	253
265	254	261	278	242	269	200	265
257	263	260	274	253	276	267	257
264	275	275	248	274	284	255	264
265	253	244	258	268	243	237	256
236	261	268	258	258	252	253	261
259	224	270	277	257	274	287	275
267	265	260	269	262	264	238	251
270	235	264	263	218	278	283	268
2353	2574	2595	2604	2482	2666	2550	2625
254	263	259	260	251	206	255	244
270	281	267	270	267	234	241	263
246	264	263	270	263	275	268	271
234	270	260	270	256	234	270	271
258	257	263	262	216	276	218	263
2597		2644		2478		2564	

JOHN H. WOOD, *Weigher.*

New York, 25*th October*, 1854.

D. D. P. J.

(Duplicate.)

Return of Mdze. weighed for Messrs. Jas. E. Woodruff & Co., viz:

M. & C.,	31 bbls. Lard,		9,839 lbs.
Burrows & Prettyman,	1 " "		277 "

M. & C.			Burrows & Prettyman.
265	207	251	
246	255	234	251
256	229	274	265
254	252	229	251
224	266	269	210
257	240	262	262
267	257	300	252
266	262	262	266
	31.7839		1.277

JOHN H. WOOD,
Weigher.

New York, 4th Nov., 1854.

(Endorsed.)
E.
D. P. J.

Return of lard weighed for acct. of Messrs. Jas. E. Woodruff & Co.

(W) 192 lbs.

259	261	258	249	268	263	252	250	275	266	260
262	255	241	276	258	268	264	246	250	248	257
260	274	240	260	240	267	227	273	223	245	256
244	254	251	267	238	272	272	250	218	273	259
239	268	248	241	275	258	248	244	252	250	271
265	244	236	259	258	270	233	235	250	276	248
274	279	236	258	263	267	263	265	237	267	255
271	273	272	252	251	262	232	258	268	251	224
230	274	277	257	280	265	217	256	204	232	256
267	238	257	298	249	277	240	235	266	258	257
2571	2620	2516	2653	2580	2669	2448	2512	2443	2566	2543

263	245	263	265	261	266	238	274	
219	237	240	260	268	228	270	228	
239	241	260	257	270	260	244	262	
267	250	251	284	248	290	202	248	
250	263	238	263	268	224	242	242	
208	233	231	250	244	2 0	255	273	
260	250	264	230	262	270	260	245	
270	253	270	265	240	238	257	262	
264	267	268	254	276	230	256	220	270
248	287	257	259	258	260	236	258	234
2478	2526	2542	2587	2595	2486	2460	2512	504

Recapitulation.

10	Bbls.	2571	10	Bbls.	2543	100	Bbls.	25518		
10	"	2620	10	"	2478					
10	"	2516	10	"	2526					
10	"	2593	10	"	2542					
10	"	2580	10	"	2587					
10	"	2669	10	"	2595					
10	"	2448	10	"	2486					
10	"	2512	10	"	2460					
10	"	2443	10	"	2512					
10	"	2566	10	"	1504	92	"	23233		
100	"	25518	92	"	23233	192	"	48751	lbs.	

(W) 105 tierces.

345	285	334	345	328	320	328	356	343	314	356
267	346	343	328	366	346	340	347	296	293	366
341	378	333	324	357	315	322	318	307	290	358
351	317	366	326	335	332	347	335	360	300	320
345	340	337	318	305	321	338	348	343	355	354
347	310	333	331	320	318	326	324	354	313	
329	289	277	333	295	335	315	328	324	320	
370	320	353	332	323	298	313	353	295	321	
343	328	332	340	338	325	300	350	356	340	
368	340	353	348	360	288	350	310	355	355	
3406	3223	3361	3835	3327	3198	3279	3369	3327	3201	3724

Recapitulation.

10	Tierces,	3,406
10	"	3,223
10	"	3,361
10	"	3,335
10	"	3,327
10	"	3,198
10	"	3,279
10	"	3,369
10	"	3,327
10	"	3,201
5	"	1,724
105		34,750 lbs.

New York, August 23d, 1854.

E. A. DEBBLE, *Weigher.*

(Endorsed.)
F. D. P. G., Exhibit (II.)
Weigher's Return.
(W) 192 barrels of lard.
(W) 105 tierces of lard.
New York, August 23d, 1854.

Invoice weight, .	320,913	57,555	263,358	
Returns, . . .	281,198	62,966	218,232	
			45,126	
				45,126
Invoice W. . .	89,985	16,611	72,374	
	83,501	15,030	68,471	
			4,903	
				4,903
				lbs. 50,029

10 empty packages.

Mr. Dubois will oblige me, letting me know how many packages about delivered from the ship Maid of Orleans and put in store by him, were empty or part empty; saw how many tierces and barrels; if Messrs. Titus & Burdett have put aside the alleged packages; please get an account from them about what proportion is out.

J. O. WOODRUFF.

	¼ out III, III, III, III, III, III, III, III, II,	26
	½ out III, III, III, III, III, III, III, II, .	23
	¾ out III, III, III, III, III, III, . . .	18
	½ out III, III, III, III, I, ...	13
M. & Co.,	¾ out III, III, III, I, ...	10
	¼ out III, II, ...	5
	All out III, III, III, II, ...	11

Marks.	1/10	1-5	⅓	½
H. G.	1266	190	181	140
H. H.	502		190	
H. I.	2032			
G. Q.	200			
G. R.	100			
G. S.	1595			91
G. T.	390			
G. V.	728			
G. V.	1525			
G. X.	360			
H. A.	667			
H. B.	810		32	
H. C.	202			
H. D.	260			
H. E.	140			
C. B.	21			69
S. S. & C.	155	125		
H. F.	2 65			

Marks.	9/10	1-5	1/4	1/8
C. A. H.	320	135		26
	4			
S. S. C.	2805	85	140	
[S. S.]	970			21
A. S. C.	600		68	
W. T.			340	
A. B. & C.	200			
B. P. C.	50		18	
K.	350			20
W. E. B.	48		100	10
R. S. L. & B.			349	
[J. S.]	2986			30
K. & C. & K. C.	450		260	
[S.]	387			72
R. E. K.	459		32	
M. P.	186		50	
F.	901		68	
F.			248	
H. F. 9/3				
C. S. 2.				
No. 1.				
(J. S.) 2.				
No mark, 13.				
C. A. H. 4.				
S. S. & C. 2.				
[J. S.] 1.				

W. PARTRIDGE.

Staten Island, Aug. 24, 1857.

	1/8	1-5	1/4	9/10	Over.	Short.
H. G.	140	230	181	1240		
H. H.			190	510		8
H. I.				2030	7	
G. Q.				200		
G. R.				100		
G. S.				1595		
G. T.	91			390		
G. V.				738		
C. V.				1525		
G. X.				360		
H. A.				667		
H. B.				790	20	
H. C.			32	220		20
H. D.				260		
H. F.				140		

No mark, 17.
W. R. B. (No. 2.) No. 2.

THOS. L. BOSS.

Feb'y 19, 1858.

No. 28.

In pursuance of an Act of the Congress of the United States of America, entitled "An Act concerning the Registering or Recording of Ships or Vessels."

William Nelson of the City, County and State of New York, having taken or subscribed the oath required by the said Act, and having sworn that he, the said William Nelson, Edward S. Dennis of said place, John Bunker, of Brooklyn; Sherburn Sears, of Milton, Ulster Co., State of New York, and Aaron Cohen, of New Orleans, State of Louisiana, are the only owners of the ship or vessel called the Maid of Orleans, of New York, whereof Edward S. Dennis is at present master, and a citizen of the United States; and, that the said ship or vessel was built at the city aforesaid, in the State of New York, during the past and present year 1847 and 1848, as per certificate of Messrs Brown & Bell, master builders, under whose direction she was built, and E. F. Purdy, Surveyor of this Port, having certified that the said ship or vessel has two decks and three masts, and, that her length is one hundred and fifty-eight feet seven inches; her breadth, thirty-six feet; her depth, twenty-one feet six inches; and, that she measures nine hundred and thirty-four $\frac{45}{95}$ tons, that she is a ship; has a square stern; no galleys; and a woman figure head; and the said William Nelson having agreed to the description and admeasurement above specified, and sufficient security having been given according to the said Act, the said ship has been duly registered at the Port of New York.

Given under our hands and seals at the Port of New York, this 20th day of January in the year one thousand eight hundred and forty-eight.

District and Port of New York, }
Collector's Office. }

I hereby certify that the within is a true copy of the original on record in this office.

[Collector's Office, District of New York.]

Given under my hand and seal, 9th March, 1858.

[SEAL.] W. J. J. WHITE,
Dep't'y Collector.

(Endorsed.) J. Woodruff & Co., 40 Broad St.
Fees $1.50.

Exhibit (3.)

District Court of the United States, }
For the Southern District of New York. }

William Nelson and others, }
vs. } *Notice.*
John O. Woodruff, et al. }

Please to take notice, that Captain Edward P. Dennis, will be

examined (*de bene esse*) on the part of the libellants and plaintiffs in the above entitled cause, before me, (a Commissioner duly appointed by the Circuit Court of the United States for the Southern District of New York, under and by virtue of the Acts of Congress in such case made and provided,) at my office, United States Court Buildings, 41 Chambers street, in the City of New York, on the 14th day of January inst., at 11 o'clock, in the forenoon of that day, at which time and place you are hereby notified to be present, and put interrogatories, if you shall think fit.

Dated, New York, the 12th day of January, A. D. 1858.

Yours, &c.,

GEO. F. BETTS,

United States Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

State of New York } *ss.*
City and County of New York. }

Joseph Madden, of said City, being duly sworn says, that on the 12th day of January, inst., he served a copy and duplicate of the within notice on Beebe, Dean and Donohue, the defendants' attorneys, by delivering such duplicate and copy to Mr. Donohue, one of said attorneys, personally, and leaving the same with him.

JOSEPH MADDEN.

Sworn before me this 14th day of January, 1858.

[SEAL.] F. C. BOWMAN,
Notary Public.

(Endorsed.)

U. S. District Court, William Nelson and others, against John O. Woodruff and others. No. of Examinations of Captain Dennis, (*de bene esse,*) 1858, January 14. Mr. Donohue appearing for claimants. Adjourned till 2 P. M.

G. F. BETTS,
U. S. Commissioner.

UNITED STATES OF AMERICA:

Southern District of New York, } *ss.*
City, County, and State of New York, }

Be it remembered, That on this fourteenth day of January, in the year of our Lord one thousand eight hundred and fifty-eight, I, George F. Betts, a Commissioner, duly appointed by the Circuit Court of the United States, for the Southern District of New York, in the Second Circuit, under and by virtue of the Acts of Congress, entitled "An Act for the more convenient taking of affidavits and bail in civil causes, depending in the Courts of the United States," passed February 20th, 1812, and the Act of Con-

gress entitled "An Act in addition to an Act entitled 'An Act for the more convenient taking of affidavits and bail in civil causes, depending in Courts of the United States,'" passed March 1st, 1817, and the Act entitled "An Act to establish the Judicial Courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at the U. S. Courts in the city of New York, in the said Southern District of New York, in the State aforesaid, Edward P. Dennis, to testify and the truth to say, on the part and behalf of the libellants, in a certain suit or matter of controversy, now depending and undetermined, in the District Court of the United States for the Southern District of New York, at the city of New York, in the District aforesaid, wherein William Nelson, Edward S. Dennis, Francis Bartlett, Sherburn Sears, and Aaron Cohen, are libellants, against John O. Woodruff and Robert M. Henning, surviving copartners of James E. Woodruff, deceased, &c. And the said Edward P. Dennis, being about the age of twenty-nine years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Edward P. Dennis, and he did thereupon depose, testify, and say as follows, viz.:

I am a sea-faring man, and captain of the ship "Maid of Orleans." I am going to sail on Monday next for New Orleans. I reside in Brooklyn. I was captain of the "Maid of Orleans" on her voyage in July, 1854, from New Orleans to New York. We left New Orleans in July; we arrived here in August. We had some lard on that passage—Messrs. Woodruff & Co. were the consignees of the lard. The weather was very warm when we left New Orleans, very hot. I saw some of the lard brought down to the vessel; there was no covering on the dray over the packages. It was put on board the ship immediately when received; it was stowed in the after-hold, in some places in four tiers, in some places in five tiers. When it came on board, the barrels were in good order, they were greasy on the outside and the lard would drip out between the staves as we rolled the barrels over—it appeared to be in a liquid state. It was taken aboard carefully, and particular attention was paid to stowing it. In my opinion the after part of the ship was by all means the best part in which to stow the lard. I saw that the lard came from up in the city. I think it did not come from any of the steamboats about. We have to keep the hatches on all the voyage; it was very hot in the hold.

E. P. DENNIS.

Subscribed and sworn to this 14th day of January, 1858, before me.

GEO. F. BETTS, *U. S. Commissioner.*

United States of America, }
Southern District of New York. } *ss.*

I, George F. Betts, a Commissioner duly appointed by the Circuit Court of the United States, for the Southern District of New York in the Second Circuit, under and by virtue of the Acts of Congress, entitled "An Act for the more convenient taking of affidavits and bail in civil causes, depending in the Courts of the United States," passed February 20th, 1812, and the Act of Congress, entitled "An Act, in addition to an Act, entitled 'An Act for the more convenient taking of affidavits and bail in civil causes, depending in the Courts of the United States,'" passed March 1st, 1817, and the Act entitled "An Act to establish the Judicial Courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, the witness is material and necessary in the cause in the caption of the said deposition named, and that he is about to proceed to sea more than one hundred miles distant from the District in which said cause is to be tried. I further certify that due notification of the time and place of taking the said deposition signed by me, was made out and served on the proctors for the claimants, to be present at the taking of the said deposition, and to put interrogatories, if he or they might think fit, and that Charles Donohue, Esq., one of the proctors for the claimants, appeared at the hour named in said notification, when the taking of said deposition was adjourned until two o'clock in the afternoon of the same day. I further certify that on the said 14th day of January, at two o'clock P. M., in the year of our Lord one thousand eight hundred and fifty-eight, I was attended by the proctor for the libellants (the proctors for the claimants not appearing at that time), and by the witness, who of sound mind and lawful age, and the witness was by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth and nothing but the truth, and the deposition was by me reduced to writing in the presence of the witness, and from his statement; and after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of filing the same in the Court for which the same was taken. And I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof, I have hereunto set my hand and seal, this 14th day of January, in the year of our Lord one thousand eight hundred and fifty-eight, and of the Independence of the United States, the eighty-second.

[SEAL.]

GEO. F. BETTS,

United States Commissioner, duly appointed by the Circuit Court of the United States, for the Southern District of New York, in the Second Circuit.

(Endorsed.)—Vol. 14, page 19. United States District Court, for the Southern District of New York.
William Nelson and others,
vs.
John O. Woodruff, *et als.*
Deposition on the part of the libellants, taken before George F. Betts, United States Commissioner, on the 14th day of January, 1858.
Filed the 14th day of January, 1858.

At a Stated Term of the District Court of the United States of America, for the Southern District of New York, held at the City Hall, in the city of New York, on Wednesday, the 28th day of April, in the year of our Lord one thousand eight hundred and fifty-eight.
Present—The Honorable Samuel R. Betts, District Judge:

William Nelson, *et als.*,
vs.
John O. Woodruff, survivor, &c. } 14, 19.

This case having been heard on the pleading and proofs, and argued by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged and decreed, by the Court, that the libellants recover in this action against the respondents, the amount of freight and primage in the pleadings referred to, which still remains unpaid. And that it be referred to one of the Commissioners of this Court, to ascertain such amount, and to report to this Court with all convenient speed.

SAMUEL R. BETTS.

(Endorsed.)—Vol. 14, page 19. United States District Court, for the Southern District of New York.
William Nelson, *et als.*
vs.
John O. Woodruff, survivor, &c.
Goodman & Jesup, Proctors for Libellants,
Beebe, Dean & Donohue, for Respondents.
Decree for libellants for freight and primage, with reference to Commissioner, to compute account, &c.
Filed the 28th day of April, 1858.

U. S. District Court.
William Nelson, *et als.*,
vs.
John O. Woodruff, *et al.* } Affidavit of service.
City and County of New York, *ss.:*
JOSEPH MADDEN, of the City of Brooklyn, being duly *sworn* doth depose and say, that he did, on the sixth day of May, in the year one thousand eight hundred and fifty-eight, serve Beebe,

Dean & Donohue, the defendants' proctors in the above entitled action, with a notice of reference, of which the annexed is a copy, by delivering the same to a clerk in their office, (they being absent therefrom) and leaving the same with him.

JOSEPH MADDEN.

Sworn to before me, this 8th day of May, 1858.

[SEAL.] F. C. BOWMAN,
Notary Public.

District Court of the United States,
For the Southern District of New York.

William Nelson, *et als.*,
vs.
John O. Woodruff, survivor, &c.

Notice of Reference.

In conformity with the order entered in the above entitled cause, you will please to take notice, that the reference ordered therein, will be proceeded with, before me, (a Commissioner duly appointed by the Circuit Court of the United States for the Southern District of New York, under and by virtue of the Acts of Congress in such case made and provided,) at my office at the United States Courts, at No. 9 College Place, in the City of New York, on the 8th day of May, inst., at 11 o'clock in the forenoon of that day, at which time and place you are hereby notified to attend with the testimony you may have to offer in the matter referred.

Dated, New York, the 6th day of May, A. D. 1858.

Yours, etc.,
GEO. F. BETTS,
United States Commissioner, duly appointed by the Circuit Court of the United States, for the Southern District of New York in the Second Circuit.

(Endorsed.)

14–19. U. S. District Court.
William Nelson, *et als.*
vs.
John O. Woodruff, survivor, &c.
No. of Reference.

GOODMAN & JESUP,
Proctors, &c.

U. S. District Court.

William Nelson, *et als.*,
vs.
John O. Woodruff, *et al.*

Reference on decree.
Mr. GOODMAN for libellants.

Proof of service of notice.

FRANCIS C. BOWMAN, (*sworn*).—I have calculated interest on the amount of freight and primage referred to in the pleadings, from August 4, 1854.

Amount of freight and primage,	$1,838 11
Interest,	480 32
Total,	$2,318 43

F. C. BOWMAN.

(Endorsed.)

14–19, U. S. District Court.

William Nelson, *et als.*,
vs.
John O. Woodruff, *et al.*

Min. on Ref.

Filed May 8, 1858.

At a stated term of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, held at the City Hall, in the City of New York, on Tuesday the eleventh day of May, in the year of our Lord one thousand eight hundred and fifty-eight.

Present: The Honorable CHARLES A. INGERSOLL, District Judge.

William Nelson, *and others*,
vs.
John O. Woodruff, Survivor, &c. } Vol. 14, p. 19.

George F. Betts, U. S. Commissioner, brings into Court the report made by him in the above entitled cause.

On motion of Messrs. Goodman and Jesup, proctors for the libellants. It is ordered that the same be confirmed, unless exceptions are filed thereto, within two days from this date.

(Endorsed.)

Vol. 14, 19.

U. S. District Court, Southern District of New York.

William Nelson, *et als.*,
vs.
John Woodruff, Survivor, &c.

GOODMAN & JESUP,
Proctors for Libellants.

Order confirmed Commissioner's report.

Nisi.

Filed 11th May, 1858.

District Court of the United States,
For the Southern District of New York.

William Nelson, *et als.*
vs.
John O. Woodruff, *et al.*, survivors, &c. } *Commissioner's Report.*

In pursuance of a decretal order made in the above entitled cause, on the 28th day of April, in the year of our Lord one thousand eight hundred and fifty-eight, by which among other things, it was referred to the undersigned one of the Commissioners of this Court, to ascertain and compute the amount due the libellant for freight and primage, in the pleadings mentioned, and to report thereon to this court with all convenient speed.

I, George F. Betts, the Commissioner, to whom the matter was referred, do report, that I have been attended by the proctor for the libellant, and have taken and examined the testimony offered to support the libellant's claim, and do find that there is due to the libellant for the freight and primage in the pleadings mentioned, the sum of - - - - - - - $1,838 11
Interest from August 14, 1854. - - - 480 32

Making in the total - - - - - - - $2,318 43

The sum of two thousand three hundred and eighteen dollars and forty-three cents, dated the 11th day of May, A. D. 1858, all which is respectfully submitted.

GEO. BETTS,
U. S. Commissioner.

GOODMAN & JESUP,
Proctors for Libellants.

(Endorsed.)

Vol. 14, page 19.

United States District Court, for the Southern District of New York.

William Nelson, *et al.*,
vs.
John O. Woodruff, *et al.*

GOODMAN & JESUP, *Proctors for Libellants.*

Commissioner's Report filed the 11th day of May, 1858.

At a Stated Term of the District Court of the United States of America, for the Southern District of New York, held at the City Hall in the City of New York, on Thursday the 13th day of May, in the year of our Lord one thousand eight hundred and fifty-eight.

Present: The Honorable SAMUEL BETTS, District Judge.

William Nelson, *et als.*,
vs.
John O. Woodruff, *et al.*

The time to file exceptions to the Commissioner's report in this cause, having expired, and no exceptions having been filed. On reading and filing report of George F. Betts, United States Commissioner, to whom the above matter was referred, by which there is reported due the libellants for freight and primage, with interest, the sum of two thousand three hundred and eighteen dollars and forty-three cents.

On motion of Goodman & Jesup, proctors for the libellants, it is ordered, that the report be in all things confirmed, and that the libellants recover in this action against the respondent, the amount reported due, together with their costs, to be taxed.

(Signed.) SAMUEL R. BETTS.

(Endorsed.)

Vol. 14, page 19.

United States District Court, for the Southern District of New York.

William Nelson, *et als.*,
vs.
John O. Woodruff, *et al.*

GOODMAN & JESUP, *Proctors for Libellants.*

Final decree on confirmation of Commissioner's Report.

Filed and entered the 13th day of May, 1858.

U. S. District Court:

John O. Woodruff and another,
ads.
William Nelson and others.

SIR.—You will please to take notice that the above named respondents appeal to the Circuit Court of the United States for

the Southern District of New York, in the Second Circuit, from the final decree entered in this cause.

Dated May 10, 1858.

Yours, &c.,

BEEBE, DEAN & DONOHUE,
Proctors for Respondents.

To GEO. F. BETTS, Esq., *Clerk.*

(Endorsed.)

14, 19, U. S. District Court.

John O. Woodruff, et al.,
vs.
William Nelson, et als.

Notice of appeal.

BEEBE, DEAN & DONOHUE, *Proctors.*

Filed, May 18th, 1858.

Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit.

William Nelson and others, libellants and appellees,
vs.
John O. Woodruff and another, respondents and appellants.
Bond for costs.

Know all men by these presents, that we, John O. Woodruff, Marcus P. Woodruff and James Hewitt, all of the city of New York, are held and firmly bound unto the above named libellants and appellees in the sum of forty-eight hundred dollars, to be paid to the said libellants, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally firmly by these presents. Sealed with our seals and dated the twenty-eighth day of May, in the year of our Lord one thousand eight hundred and fifty-eight.

Whereas the above named respondents have prosecuted an appeal to the Circuit Court of the United States, for the Southern District of New York, in the Second Circuit, to reverse the decree rendered in the above entitled suit, by the Judge of the District Court of the United States, for the Southern District of New York:

Now, therefore, the condition of this obligation is such, that if the above named appellants shall prosecute their appeal to effect and answer all damages and costs, if they fail to make their appeal

good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

JOHN O. WOODRUFF. [SEAL.]
MARCUS P. WOODRUFF, [SEAL.]
JAMES HEWITT. [SEAL.]

Sealed and delivered, and taken and acknowledged, this 28th day of May, 1858, before me.

GEO. W. MORTON, *U. S. Com'r.*

United States of America, Southern District of New York. } *ss.*

Marcus P. Woodruff and James Hewitt being duly sworn, each depose and say, that he resides in the city of New York, and that he is worth the sum of forty-eight hundred dollars, over and above all his just debts and liabilities.

MARCUS P. WOODRUFF,
JAMES HEWITT.

Sworn to, this 28th day of May, A. D. 1858, before me.

GEO. W. MORTON, *U. S. Com'r.*

The sufficiency of the sureties to the within bond approved.

SAML. R. BETTS, *District Judge.*

New York, May 28, 1858.

(Endorsed.)

Vol. XIV., page 19.
U. S. Circuit Court.

William Nelson and other, libellants and appellees, *v.* John O. Woodruff and other, respondents and appellants. } Bond for costs on appeal.

BEEBE, DEAN & DONOHUE, *Appellants' Proctors.*

Filed, this 28th day of May, 1858.

Circuit Court of the United States, for the Southern District of New York, in the Second Circuit.

John O. Woodruff and other, respondents and appellants. *ads.* William Nelson and others, libellants and appellees.

To the Honorable, the Circuit Court of the United States, for the Southern District of New York, in the Second District:

The petition of John O. Woodruff and others, respondents and appellants, respectfully showeth, that heretofore, and on or about

the 26th day of November, 1856, the above named libellants exhibited their libel in the District Court of the United States for the Southern District of New York, against your petitioners, praying, for the reasons therein mentioned, that the said Court would be pleased to pronounce for the claim of the libellants, therein mentioned, with costs. That process was thereupon issued and the respondents duly appeared and answered; that thereafter and on or about the 28th day of April, 1858, a final decree was made in the said cause in favor of the libellants for their claim, with costs; whereas these respondents allege that by law they were entitled to a decree that such libel be dismissed with costs; for which, and other reasons, these respondents appeal to the Circuit Court to be held in said district, and they intend to have such appeal heard anew on the pleadings and proofs in said District Court, and on new pleadings and proofs, to be introduced in such Circuit Court; and the respondents pray that the record and proceedings may be reversed, or such other decree made therein as may be just.

BEEBE, DEAN & DONOHUE,
Proctors for Appellants.

(Endorsed.)
14, 19. U. S. Circuit Court.

John O. Woodruff and other, *ads.*
William Nelson and others.
} Petition for appeal,

BEEBE, BEAN & DONOHUE, *Proctors.*
Filed, August 16, 1858.

At a special term of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, held at the City Hall, in the city of New York, on Thursday, the twenty-second day of September, in the year of our Lord one thousand eight hundred and fifty-nine.

Present—The Honorable SAMUEL NELSON, an Associate Justice of the Supreme Court of the United States.

William Nelson, *et als.*
Libellants and Appellees,
vs.
John O. Woodruff, *et al.*
Respondents and Appellants.

The appeal in this case coming on to be heard,

Mr. Goodman reads from the Apostles the evidence on the part of the libellants and appellees.

Mr. Beebe reads from the Apostles the evidence on the part of respondents and appellants.
Mr. Beebe argues on the part of respondents and appellants.
Mr. Goodman " " " libellants and appellees.
Mr. Houghton argues on the same side.
Mr. Beebe is heard in reply.
Cur adv. vult.

At a special term of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, held at the City Hall, in the City of New York, on Thursday, the thirteenth day of October, in the year of our Lord one thousand eight hundred and fifty-nine.

Present—The Honorable SAMUEL NELSON, an Associate Justice of the Supreme Court of the United States.

William Nelson, Edward S. Dennis, Francis Bartlett, Sherburne Sears, and Aaron Cohen, owners of the ship Maid of Orleans, &c.
Libellants and Appellees,
vs.
John O. Woodruff and Robert N. Henning, surviving co-partners of James E. Woodruff, deceased,
Respondents and Appellants.

This cause having been brought to a hearing upon an appeal to this Court from a final decree of the District Court of the United States for the Southern District of New York, and the said cause having been duly heard upon the Apostles therein and argued by Mr. Goodman, advocate for libellants and appellees, and W. R. Beebe, Esq., advocate for respondents and appellants, and due deliberation having been had in the premises, It is ordered, adjudged, and decreed by the said Court now here, that the said decree of the said District Court heretofore made in this cause, be and the same is hereby in all things affirmed with costs to the said appellees, which said decree with the costs in the said District Court duly taxed and the interest thereon, to the date of this decree with the said costs of this Court, the same having been duly taxed at the sum of one hundred and twenty-seven dollars and fifty cents, amount in the whole to the sum of twenty-eight hundred and forty-seven dollars and nine cents.

To the Honorable the Supreme, Court of the United States of America.

The Petition of Appeal of John O. Woodruff and Robert Henning, survivors of James E. Woodruff, deceased—

Respectfully showeth:

That heretofore, and on or about the eighth day of December, 1856, William Nelson, Edward S. Dennis, Francis Bartlett, Sherburne Sears, and Aaron Cohen, filed their libel in the District Court of the United States, for the Southern District of New York, against the petitioners, claiming freight.

That thereafter an answer was duly filed, taking issue on such libel, and the cause was duly heard in said District Court, by a decree thereof, on the thirteenth day of May, 1858. The said Court adjudged and decreed that the libellants should recover against the petitioners, the said freight, to the amount of two thousand three hundred and eighteen dollars and forty-three hundredths of a dollar, besides costs. That the petitioners duly prosecuted their appeal from the said decree to the Circuit Court of the United States for the Southern District of New York, in the Second Circuit and the same was duly heard in said Court, and that thereafter, the said Circuit Court did order, adjudge, and decree, that said decree of the District Court should be in all things affirmed with costs.

That your petitioner respectfully insists that the said decree is erroneous, and he appeals from the said decree, and each and every part thereof, and prays that the Supreme Court of the United States may proceed to hear the said cause anew, on new allegation and proofs, and to reverse and annul said decree of the said Circuit Court, and to restore to the appellants all rights which he has lost by reason of said decree.

BEEBE, DEAN & DONOHUE,
For Appellant.

JOHN O. WOODRUFF, *Appellants.*

Filed, October 25, 1859.

Circuit Court of the United States of America,
For the Southern District of New York, in the Second Circuit.

John O. Woodruff and Robert M. Henning, Survivors of James E. Woodruff, dec'd. Respondents and Appellants,

vs.

William Nelson, Edward S. Dennis, Francis Bartlett, Sherburne Sears and Aaron Cohen, Libellants and Appellees.

} Bond for Costs.

Know all men by these presents, that we, Robert M. Henning and Marcus Woodruff, are held and firmly bound unto the above named William Nelson, Edward S. Dennis, Francis Bartlett, Sherburne Sears and Aaron Cohen, in the sum of six thousand dollars, to be paid to the said William Nelson and others, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally firmly by these presents. Sealed with our seals, and dated the seventeenth day of October, in the year of our Lord one thousand eight hundred and fifty-nine.

Whereas, the above named John O. Woodruff, *et al.*, have prosecuted their appeal to the Supreme Court of the United States, to reverse the decree rendered in the above entitled suit, by the Judge of the Circuit Court of the United States, for the Southern District of New York.

Now therefore, the condition of this obligation is such, that if the above named John O. Woodruff, *et al.*, shall prosecute their appeal to effect and answer all damages and costs, if they fail to make their appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

R. M. HENNING, [SEAL.]
MARCUS P. WOODRUFF, [SEAL.]

Sealed and delivered, and taken and acknowledged, this 22d day of October, 1859, before me.

[SEAL.] O. R. STEELE,
Notary Public.

United States of America, } *ss.*
Southern District of New York, }

Robert M. Henning and Marcus P. Woodruff, each for himself, being duly sworn, doth depose and say, that he resides in the

Southern District of New York, and that he is worth the sum of twelve thousand dollars over and above all his just debts and liabilities.

R. M. HENNING,
MARCUS P. WOODRUFF.

Sworn to, this 22d day of October,
A. D. 1859, before me.
[SEAL.] O. R. STEELE,
Notary Public.

(Endorsed.)
United States Circuit Court.

John O. Woodruff, *et al.*, Respondents and Appellants,
vs.
William Nelson, *et als.*, Libellants and Appellees.
} Bonds for costs on appeal.

BEEBE, DEAN AND DONOHUE,
Proctors.

Approved October 24th, 1859.

SAML. R. BETTS.

Filed this 24th day of October, 1859.

By the Honorable Samuel R. Betts, Judge of the Circuit Court of the United States for the Southern District of New York, in the Second Circuit:

To William Nelson, Edward S. Dennis, Francis Bartlett, Sherburne Sears and Aaron Cohen.

Whereas, John O. Woodruff and Robert Henning, survivors of James E. Woodruff, deceased, have lately appealed to the Supreme Court of the United States from a decree rendered in the Circuit Court of the United States for the Southern District of New York, in the Second Circuit, made in favor of you the said William Nelson, and others, against the said John O. Woodruff, *et al.*, and has filed the security required by law. You are therefore hereby cited to appear before the said Supreme Court at the City of Washington, on the first Monday of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the City of New York, in the Southern District of New York, in the Second Circuit, the seventeenth day of October, in the year of our Lord, 1859, and of the Independence of the United States the eighty-fourth.

SAM. R. BETTS.

BEEBE, DEAN, AND DONOHUE,
Proctors of Appellants.

Filed October 25th, 1859.